

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/1. INTRODUCTION/1. The Home Office and the Foreign and Commonwealth Office.

BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (

1. INTRODUCTION

1. The Home Office and the Foreign and Commonwealth Office.

Issues relating to nationality, immigration and asylum¹ generally fall within the remit of the Secretary of State for the Home Department², whose department is commonly known as the Home Office³. Within the Home Office there is an Immigration and Nationality Directorate, the main functions of which include immigration control, dealing with applications to extend stay or for asylum, and granting citizenship to eligible applicants⁴. Since April 2000, the National Asylum Support Service has been responsible for providing support for asylum-seekers⁵. Applications for United Kingdom passports are dealt with by the United Kingdom Passport Service, part of the Passport and Records Agency, which is an executive agency of the Home Office⁶. The Foreign and Commonwealth Office⁷ has some functions relating to immigration, particularly in relation to visas⁸.

1 As to British nationality see para 5 et seq post; as to immigration see para 83 et seq post; and as to asylum see para 238 et seq post.

2 As to the Secretary of State see para 2 post.

3 As to the Home Office generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 466 et seq.

4 As to the Immigration and Nationality Directorate see the Civil Service Year Book 2002 col 391 et seq.

5 As to the National Asylum Support Service see para 245 post. As to asylum support see para 245 et seq post.

6 As to the Passport and Records Agency see the Civil Service Year Book 2002 cols 441-442. As to passports see further para 78 post.

7 As to the Foreign and Commonwealth Office see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 459 et seq.

8 See the Civil Service Year Book 2002 col 322.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/1. INTRODUCTION/2. The Secretary of State.

2. The Secretary of State.

Acts of Parliament relating to British nationality, immigration and asylum¹ confer various powers and duties on the Secretary of State². The office of Secretary of State is a unified office, and in law each Secretary of State is capable of performing the functions of all or any of them³.

In practice, functions relating to British nationality, immigration and asylum mostly belong to the Secretary of State for the Home Department, who is commonly known as the Home Secretary⁴.

The Secretary of State may arrange for any of his functions (except his powers to make regulations or rules⁵) relating to:

- 1 (1) registration and naturalisation⁶;
- 2 (2) renunciation, resumption and deprivation of British citizenship⁷ or British overseas territories citizenship⁸;
- 3 (3) renunciation and deprivation of British national (overseas) status⁹,

to be exercised, in the Channel Islands or the Isle of Man, by the Lieutenant-Governor in cases concerning British citizens or citizenship and, in any British overseas territory¹⁰, by the Governor in cases concerning British overseas territories citizens or citizenship and in cases concerning British nationals (overseas) or British national (overseas) status¹¹. The arrangements may provide for any such function to be exercisable only with the approval of the Secretary of State¹².

Any discretion vested by or under the British Nationality Act 1981 in the Secretary of State, a Governor or a Lieutenant-Governor must be exercised without regard to the race, colour or religion of any person who may be affected by its exercise¹³. The Secretary of State, a Governor or a Lieutenant-Governor, as the case may be, is not required to assign any reason for the grant or refusal of any application under that Act the decision on which is at his discretion; and the decision of the Secretary of State or a Governor or Lieutenant-Governor on any such application is not subject to appeal to, or review in, any court¹⁴.

1 As to British nationality see para 5 et seq post; as to immigration see para 83 et seq post; and as to asylum see para 238 et seq post.

2 In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1.

3 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 355.

4 As to the Home Secretary see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 466 et seq. See also para 1 ante.

5 See the British Nationality Act 1981 s 43(3). As to the general power to make regulations see para 6 post.

6 See *ibid* s 43(2)(a).

7 As to British citizens and citizenship see paras 8, 23-43 post.

8 See the British Nationality Act 1981 s 43(2)(b) (amended by virtue of the British Overseas Territories Act 2002 s 2(2)(a)). As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 post.

9 See the British Nationality Act 1981 s 43(2)(c) (added by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(6)). As to British national (overseas) status see paras 8, 63-65 post.

10 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 post.

11 See the British Nationality Act 1981 ss 43(1), 50(1) (s 43(1) amended by the British Overseas Territories Act 2002 s 7, Sch 2; and the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(6); and by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(a), (b)).

12 British Nationality Act 1981 s 43(4).

13 *Ibid* s 44(1). See further para 26 note 7 post.

14 Ibid s 44(2). This does not affect the jurisdiction of any court to entertain proceedings of any description concerning the rights of any person under any provision of the British Nationality Act 1981: s 44(3). See also *R v Chief Immigration Officer, Gatwick Airport, ex p Kharrazi* [1980] 3 All ER 373, [1980] 1 WLR 1396, CA; *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL; *R v Secretary of State for the Home Department, ex p Mehta* [1992] Imm AR 512. It was held in *R v Secretary of State for the Home Department, ex p Fayed* [1997] 1 All ER 228, [1998] 1 WLR 763, CA, that the British Nationality Act 1981 s 44(2) does not relieve the Secretary of State of his obligation to be fair or deprive the court of its power to ensure that the needs of fairness are met. In practice, reasons are now volunteered in all cases where an application for British citizenship is refused: see 303 HC Official Report (6th series), 22 December 1997, written answers col 564. See also para 37 note 8 post.

UPDATE

2 The Secretary of State

TEXT AND NOTE 14--1981 Act s 44(2), (3) repealed: Nationality, Immigration and Asylum Act 2002 s 7(1).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/1. INTRODUCTION/3. The Lord Chancellor.

3. The Lord Chancellor.

The Lord Chancellor¹, as well as the Secretary of State², has certain functions relating to immigration and asylum³. The Lord Chancellor appoints members of the Immigration Appeal Tribunal, members of the Special Immigration Appeals Commission and adjudicators⁴, and is consulted about the appointment of the Immigration Services Commissioner⁵. He also has power to make rules regulating appeals relating to immigration and asylum⁶.

1 As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 477 et seq.

2 As to the Secretary of State see para 2 ante.

3 As to immigration see para 83 et seq post; and as to asylum see para 238 et seq post.

4 As to the appellate authorities see para 173 post. As to appeals generally see para 173 et seq post.

5 See para 169 post.

6 See para 173 post. As to the rules made see the Immigration and Asylum (Procedure) Rules 2000, SI 2000/2333 (as amended); and para 173 et seq post.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/1. INTRODUCTION/4. Developments in nationality, immigration and asylum law.

4. Developments in nationality, immigration and asylum law.

At the date at which this volume states the law, a Nationality, Immigration and Asylum Bill was being considered by Parliament. The provisions proposed by Part 1 of the Bill relate to nationality¹, and include provision for: (1) additional requirements for naturalisation; (2) a citizenship ceremony, oath and pledge; (3) new powers relating to deprivation of citizenship; (4) a duty to give reasons for decisions; and (5) the abolition of discrimination based on

illegitimacy. Part 2 provides for accommodation centres for asylum-seekers²; Part 3 deals with other support and assistance for asylum-seekers³; Part 4 makes provision relating to detention and removal⁴; Part 5 deals with immigration and asylum appeals⁵; Part 6 concerns immigration procedure⁶; Part 7 relates to offences⁷; and Part 8 contains general provisions.

- 1 As to British nationality see para 5 et seq post.
- 2 As to asylum-seekers see para 238 et seq post.
- 3 As to asylum support see para 245 et seq post.
- 4 As to detention see para 156 et seq post; and as to removal see para 152 et seq post.
- 5 As to appeals see para 173 et seq post.
- 6 As to immigration see para 83 et seq post.
- 7 As to offences generally see para 196 et seq post.

UPDATE

4 Developments in nationality, immigration and asylum law

TEXT AND NOTES--The Nationality, Immigration and Asylum Bill received the royal assent on 7 November 2002 and certain provisions came into force on that day. Further provisions came into force on dates during 2003 and 2004: SI 2002/2811, SI 2003/1, SI 2003/249, SI 2003/754, SI 2003/1040, SI 2003/1747, SI 2003/2993, SI 2003/3156, SI 2004/1201. The effects of the Act on the existing law have been incorporated in the appropriate paragraphs.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(1) INTRODUCTION/5. British nationality legislation.

2. BRITISH NATIONALITY

(1) INTRODUCTION

5. British nationality legislation.

British nationality law is now mainly contained in the British Nationality Act 1981¹, supplemented by various other Acts² and by subordinate legislation³. The British Nationality Act 1981 created a new nationality structure, with effect from 1 January 1983⁴, and repealed previous nationality legislation which was contained in the British Nationality Acts 1948 to 1965⁵. However, the national status on and after 1 January 1983 of a person born before that date frequently depends upon the status he had, or would in hypothetical circumstances have had, under the British Nationality Acts 1948 to 1965⁶. In addition, the British Nationality Act 1948 itself, with effect from 1 January 1949⁷, created a new concept of citizenship⁸, the applicability of which to those already in existence on that date depended upon their status under the law in force prior to that date⁹. Thus, though now repealed¹⁰, the British Nationality Acts 1948 to 1965 continue to be of relevance during the lifetime of anybody born up to and including 31 December 1982; and, in the case of a person born before 1 January 1949, not one but two repealed statutory codes may be relevant¹¹.

1 The British Nationality Act 1981 (with the exception of s 49 (now repealed) and s 53 (as amended), which came into force on the passing of the Act, ie 30 October 1981) came into force on 1 January 1983: see s 53(1), (2), (3); and the British Nationality Act 1981 (Commencement) Order 1982, SI 1982/933. See also the British Nationality (Falkland Islands) Act 1983 s 5(2). The British Nationality Act 1981 s 49 contained provisions relating to registration and naturalisation under the British Nationality Acts 1948 to 1965 between the passing and the commencement of the British Nationality Act 1981, and was repealed together with those Acts on 1 January 1983 (see note 5 *infra*): s 52(8), Sch 9.

The British Nationality Act 1981 extends to Northern Ireland: s 53(4). The general statutory definition of the United Kingdom includes Great Britain together with Northern Ireland: see the Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). For the purposes of the British Nationality Act 1981, 'United Kingdom' means Great Britain, Northern Ireland, the Channel Islands and the Isle of Man: s 50(1). See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 3.

2 Other relevant Acts include eg the British Nationality (Falklands Islands) Act 1983; and the British Overseas Territories Act 2002. Several of the relevant Acts relate to Hong Kong: see eg the Hong Kong Act 1985; the British Nationality (Hong Kong) Act 1990; the Hong Kong (War Wives and Widows) Act 1996; and the British Nationality (Hong Kong) Act 1997.

3 Subordinate legislation which affects substantive rights and status includes eg the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070 (as amended); the British Citizenship (Designated Service) Order 1982, SI 1982/1004 (as amended); the British Dependent Territories Citizenship (Designated Service) Order 1982, SI 1982/1710; the Hong Kong (British Nationality) Order 1986, SI 1986/948 (as amended); and the British Nationality (Hong Kong) (Selection Scheme) Order 1990, SI 1990/2292 (as amended). As to subordinate legislation dealing with procedural and administrative matters see para 6 *post*.

4 See note 1 *supra*.

5 See the British Nationality Act 1981 s 52(8), Sch 9. The British Nationality Acts 1948 to 1965 included the British Nationality Act 1948; the British Nationality Act 1958; the British Nationality Act 1964; the British Nationality (No 2) Act 1964; and the British Nationality Act 1965. The provisions of these Acts are repealed in their entirety except for the British Nationality Act 1948 s 3 (as amended) (limitation of criminal liability of Commonwealth and Irish citizens; status of Irish citizens and British protected persons) and ss 32(3), 33(1), 34(1) (s 33(1) as amended) (interpretation): see paras 12, 82 *post*.

6 The position is similar in relation to the Immigration Act 1971: eg that Act is substantially amended by the British Nationality Act 1981 s 39, Sch 4 (s 39 as amended), but certain provisions of the British Nationality Act 1981 (see eg s 11 (acquisition of British citizenship at commencement: see para 24 *post*)) depend upon the Immigration Act 1971 prior to those amendments.

7 Ie the date of commencement of the British Nationality Act 1948: see s 34(2) (repealed).

8 Ie citizenship of the United Kingdom and colonies: see *ibid* Pt II (ss 4-22) (repealed); and paras 16-21 *post*.

9 See the British Nationality and Status of Aliens Acts 1914 to 1943, comprising the British Nationality and Status of Aliens Act 1914; the British Nationality and Status of Aliens Act 1918; the British Nationality and Status of Aliens Act 1922; the British Nationality and Status of Aliens Act 1933; and the British Nationality and Status of Aliens Act 1943. The provisions of these Acts were repealed as from 1 January 1949 (see the British Nationality Act 1948 s 34(3), Sch 4 Pt II (repealed)) except for the British Nationality and Status of Aliens Act 1914 ss 17, 18 (both as amended) (status of aliens) and ss 27, 28 (both as amended) (interpretation): see para 13 *post*. That Act was renamed the Status of Aliens Act 1914: see s 28(2) (amended by the British Nationality Act 1948 s 34(3), Sch 4 Pt II).

10 See the text and note 5 *supra*.

11 Note also that present status often depends upon previous status of parents and grandparents: see eg *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Ross-Clunis* [1991] 2 AC 439, [1991] 3 All ER 353, HL.

UPDATE

5 British nationality legislation

NOTE 3--SI 1982/1004 replaced: British Citizenship (Designated Service) Order 2006, SI 2006/1390 (amended by SI 2007/744, SI 2009/2054, SI 2009/2958).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(1) INTRODUCTION/6. General power to make regulations and Orders in Council.

6. General power to make regulations and Orders in Council.

The Secretary of State¹ may by regulations make provision generally for carrying into effect the purposes of the British Nationality Act 1981². In particular, provision may be made:

- 4 (1) for prescribing anything which under the Act is to be prescribed³;
 - 5 (2) for prescribing the manner in which, and the persons to and by whom, applications for registration or naturalisation may or must be made⁴;
 - 6 (3) for the registration of anything required or authorised by or under the Act to be registered⁵;
 - 7 (4) for the administration and taking of oaths of allegiance, as to the time within which oaths of allegiance must be taken, and for the registration of oaths of allegiance⁶;
 - 8 (5) for the giving of any notice required or authorised to be given to any person under the Act⁷;
 - 9 (6) for the cancellation of the registration of, and the cancellation and amendment of certificates of naturalisation⁸ relating to, persons deprived of citizenship⁹ or of British national (overseas) status¹⁰, and for requiring such certificates to be delivered up for those purposes¹¹;
 - 10 (7) for the births and deaths of persons of any class or description born or dying in a Commonwealth country¹² to be registered there by the High Commissioner for Her Majesty's government in the United Kingdom¹³ or by members of his official staff¹⁴;
 - 11 (8) for the births and deaths of persons of any class or description born or dying in a foreign country¹⁵ to be registered there by consular officers or other officers in the service of Her Majesty's government in the United Kingdom¹⁶;
 - 12 (9) for enabling the births and deaths of British citizens, British overseas territories citizens, British nationals (overseas), British overseas citizens, British subjects and British protected persons¹⁷ born or dying in any country in which Her Majesty's government in the United Kingdom has for the time being no diplomatic or consular representatives to be registered¹⁸;
- 1
1. (a) by persons serving in the diplomatic, consular or other foreign service of any country which, by arrangement with Her Majesty's government in the United Kingdom, has undertaken to represent that government's interest in that country¹⁹;
 - or
 2. (b) by a person authorised in that behalf by the Secretary of State²⁰.
- 2

With the consent of the Treasury²¹, the Secretary of State may also by regulations make provision for the imposition, recovery and application of fees in connection with any of the following matters²²:

- 13 (i) any application made to the Secretary of State under the British Nationality Act 1981, other than an application for the purpose of acquiring British national (overseas) status²³;

- 14 (ii) the effecting in the United Kingdom of any registration authorised by or under the Act, other than registration as a British national (overseas)²⁴;
- 15 (iii) the making in the United Kingdom of any declaration, the grant there of any certificate, or the taking there of any oath of allegiance authorised to be made, granted or taken by or under the Act²⁵;
- 16 (iv) the supplying in the United Kingdom of a certified or other copy of any notice, certificate, order, declaration or entry given, granted or made under or by virtue of the Act or any of the former nationality Acts²⁶;
- 17 (v) the carrying out of searches in or of any registers or other records, being registers or records held in the United Kingdom by or on behalf of the Secretary of State, which are or may be relevant for the purpose of determining the status of any person under the Act or any of the former nationality Acts²⁷;
- 18 (vi) the supplying by or on behalf of the Secretary of State of an opinion in writing concerning the status of any person under the Act or any of the former nationality Acts, or a certified or other copy of such an opinion²⁸.

Regulations²⁹ may make different provision for different circumstances³⁰. The power to make regulations is exercisable by statutory instrument³¹.

Her Majesty may by Order in Council provide for certain legislation³² to apply, with such adaptations and modifications as appear necessary, to births and deaths registered: (A) in accordance with regulations³³; or (B) at a consulate of Her Majesty in accordance with regulations³⁴ or in accordance with instructions of the Secretary of State³⁵; or (C) by a High Commissioner for Her Majesty's government in the United Kingdom or members of his official staff in accordance with instructions of the Secretary of State³⁶.

Any regulations or Orders in Council made under the powers described above are subject to annulment in pursuance of a resolution of either House of Parliament³⁷.

1 As to the Secretary of State see para 2 ante.

2 British Nationality Act 1981 s 41(1). As to the regulations that have been made see the British Nationality (General) Regulations 1982, SI 1982/986; the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987; the British Nationality (Falkland Islands) Regulations 1983, SI 1983/479 (now lapsed); and the British Nationality (Hong Kong) Regulations 1986, SI 1986/2175. See also note 14 infra.

3 British Nationality Act 1981 s 41(1)(a).

4 Ibid s 41(1)(b). As to applications for registration or naturalisation see para 79 post.

5 Ibid s 41(1)(c).

6 Ibid s 41(1)(d). Regulations under s 41(1) (as amended) may provide for the extension of any time-limit for the taking of oaths of allegiance: s 41(3)(a). As to oaths of allegiance see para 79 post.

7 Ibid s 41(1)(e).

8 As to certificates of naturalisation see para 79 post.

9 As to citizenship see paras 8, 23 et seq post.

10 As to British national (overseas) status see paras 8, 63-65 post.

11 British Nationality Act 1981 s 41(1)(f) (amended by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(4)(b)).

12 I.e. a country mentioned in the British Nationality Act 1981 Sch 3 (as amended): see para 11 note 16 post.

13 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

14 British Nationality Act 1981 s 41(1)(g). As to the regulations that have been made under s 41(1)(g), (h), (i) (as amended) (see heads (7)-(9) in the text) see the Registration of Overseas Births and Deaths Regulations 1982, SI 1982/1123 (amended by SI 1982/1647; SI 1985/1574; SI 1997/1466).

15 'Foreign country' means a country other than the United Kingdom, a British overseas territory, a country mentioned in the British Nationality Act 1981 Sch 3 (as amended) (see para 11 note 16 post), and the Republic of Ireland: s 50(1) (definition amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to British overseas territories (formerly known as dependent territories) see para 44 note 1 post.

16 British Nationality Act 1981 s 41(1)(h). See also note 14 supra.

17 As to British citizens and citizenship see paras 8, 23-43 post; as to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 post; as to British nationals (overseas) see paras 8, 63-65 post; as to British overseas citizens see paras 8, 58-62 post; as to British subjects see paras 9, 66-71 post; and as to British protected persons see paras 10, 72-76 post.

18 British Nationality Act 1981 s 41(1)(i) (amended by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(4)(c)). See also note 14 supra.

19 British Nationality Act 1981 s 41(1)(i)(i). See also note 14 supra.

20 Ibid s 41(1)(i)(ii). See also note 14 supra.

21 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) paras 512-517.

22 British Nationality Act 1981 s 41(2). Regulations may provide for any fees imposed by the regulations to be payable at such times as may be prescribed: s 41(3)(b). As to the regulations that have been made see the British Nationality (Fees) Regulations 1996, SI 1996/444 (amended by SI 1997/1328).

23 British Nationality Act 1981 s 41(2)(a) (amended by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(4)(d)).

24 British Nationality Act 1981 s 41(2)(b) (amended by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(4)(d)).

25 British Nationality Act 1981 s 41(2)(c).

26 Ibid s 41(2)(d). 'The former nationality Acts' means the British Nationality Acts 1948 to 1965, the British Nationality and Status of Aliens Acts 1914 to 1943, and any Act repealed by the British Nationality and Status of Aliens Acts 1914 to 1943 or by the Naturalization Act 1870: British Nationality Act 1981 s 50(1). As to the British Nationality Acts 1948 to 1965 see para 5 note 5 ante; and as to the British Nationality and Status of Aliens Acts 1914 to 1943 see para 5 note 9 ante.

27 British Nationality Act 1981 s 41(2)(e).

28 Ibid s 41(2)(f).

29 Ie under ibid s 41(1) (as amended) or s 41(2) (as amended).

30 Ibid s 41(3).

31 Ibid s 41(6).

32 Ie any Act or Northern Ireland legislation to which ibid s 41(4) applies: see s 41(4). Section 41(4) applies to: (1) the Births and Deaths Registration Act 1953, the Registration Service Act 1953 and the Registration of Births, Deaths and Marriages (Scotland) Act 1965; and (2) so much of any Northern Ireland legislation for the time being in force as relates to the registration of births and deaths: British Nationality Act 1981 s 41(5). As to legislation relating to the registration of births, deaths and marriages see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) para 501 et seq.

33 Ibid s 41(4)(a). See also note 36 infra. The regulations referred to in the text are regulations made in pursuance of s 41(1)(g)-(i) (as amended) (see heads (7)-(9) in the text) or of the British Nationality Act 1948 s 29(1)(f), (g) (repealed).

34 The regulations referred to in the text are regulations made under the British Nationality and Status of Aliens Acts 1914 to 1943.

35 British Nationality Act 1981 s 41(4)(b). See also note 36 infra.

36 Ibid s 41(4)(c). An order under s 41(4) may exclude, in relation to births and deaths so registered, any of the provisions of s 45 (evidence: see para 80 post): s 41(4). As to the order that has been made see the Registration (Entries of Overseas Births and Deaths) Order 1982, SI 1982/1526.

37 British Nationality Act 1981 s 41(7).

UPDATE

6 General power to make regulations and Orders in Council

TEXT AND NOTES 1-20--Also, heads (10) for determining whether a person has sufficient knowledge of a language for the purpose of an application for naturalisation; (11) for determining whether a person has sufficient knowledge about life in the United Kingdom for the purpose of an application for naturalisation: 1981 Act s 41(1)(ba), (bb) (heads (10), (11) added by Nationality, Immigration and Asylum Act 2002 s 1); (12) as to the consequences of failure to comply with provision made under any of heads (1)-(11): 1981 Act s 41(1)(j) (added by Immigration, Asylum and Nationality Act 2006 s 50(4)).

Regulations under head (10) or (11) may, in particular (a) make provision by reference to possession of a specified qualification; (b) make provision by reference to possession of a qualification of a specified kind; (c) make provision by reference to attendance on a specified course; (d) make provision by reference to attendance on a course of a specified kind; (e) make provision by reference to a specified level of achievement; (f) enable a person designated by the Secretary of State to determine sufficiency of knowledge in specified circumstances; (g) enable the Secretary of State to accept a qualification of a specified kind as evidence of sufficient knowledge of a language: 1981 Act s 41(1A) (added by 2002 Act s 1).

NOTE 2--SI 1982/986 replaced: British Nationality (General) Regulations 2003, SI 2003/548 (see PARA 77-82). SI 1982/987 replaced: British Nationality (British Overseas Territories) Regulations 2007, SI 2007/3139. SI 1986/2175 amended: SI 2003/540.

TEXT AND NOTE 6--Replaced. Now head (4) (a) for the time within which an obligation to make a citizenship oath and pledge at a citizenship ceremony must be satisfied; (b) for the time within which an obligation to make a citizenship oath or pledge must be satisfied; (c) for the content and conduct of a citizenship ceremony; (d) for the administration and making of a citizenship oath or pledge; (e) for the registration and certification of the making of a citizenship oath or pledge; (f) for the completion and grant of a certificate of registration or naturalisation: 1981 Act s 41(d)-(de) (substituted by 2002 Act Sch 1 para 3).

As to the making of regulations in relation citizenship ceremonies, oaths and pledges, see the 1981 Act s 41(3A), (3B); 2002 Act Sch 1 paras 8, 9 (1981 Act s 41(3A), (3B) added by 2002 Act Sch 1 para 7).

NOTE 6--For 'taking of oaths of allegiance' read 'making of a citizenship oaths and pledges of citizenship': 1981 Act s 41(3)(a) (amended by 2002 Act Sch 1 para 6).

NOTE 14--SI 1982/1123 further amended: SI 2009/1892.

TEXT AND NOTES 22-28--1981 s 41(2) repealed: 2006 Act Sch 2 para 1(a), Sch 3.

The Secretary of State may by order require an application or claim in connection with immigration or nationality (whether or not under an enactment) to be accompanied by a specified fee: s 51(1). In exercise of the power conferred by s 51(1), (2), the Secretary of State has made the Immigration and Nationality (Fees) Order 2007, SI 2007/807 (amended by SI 2008/166, SI 2009/420). The Secretary of State may by

order provide for a fee to be charged by him, by an immigration officer or by another specified person in respect of (1) the provision on request of a service (whether or not under an enactment) in connection with immigration or nationality, (2) a process (whether or not under an enactment) in connection with immigration or nationality, (3) the provision on request of advice in connection with immigration or nationality, or (4) the provision on request of information in connection with immigration or nationality: 2006 Act s 51(2). Where an order under s 51 provides for a fee to be charged, regulations made by the Secretary of State (a) must specify the amount of the fee, (b) may provide for exceptions, (c) may confer a discretion to reduce, waive or refund all or part of a fee, (d) may make provision about the consequences of failure to pay a fee, (e) may make provision about enforcement, and (f) may make provision about the time or period of time at or during which a fee may or must be paid: s 51(3). See the Immigration and Nationality (Fees) Regulations 2009, SI 2009/816; and the Immigration and Nationality (Cost Recovery Fees) Regulations 2009, SI 2009/421. Fees paid by virtue of the 2006 Act s 51 must (i) be paid into the Consolidated Fund, or (ii) be applied in such other way as the relevant order may specify: s 51(4).

A fee imposed under the 2006 Act s 51 may relate to a thing whether or not it is done wholly or partly outside the United Kingdom; but s 51 is without prejudice to (1) the Consular Fees Act 1980 s 1, and (2) any other power to charge a fee: 2006 Act s 52(1). Section 51 is without prejudice to the application of the Finance (No 2) Act 1987 s 102 (government fees and charges); and an order made under s 102 in respect of a power repealed by the 2006 Act Sch 2 has effect as if it related to the powers under s 51 in so far as they relate to the same matters as the repealed power: s 52(2). An order or regulations under s 51 (a) may make provision generally or only in respect of specified cases or circumstances, (b) may make different provision for different cases or circumstances, (c) may include incidental, consequential or transitional provision, and (d) must be made by statutory instrument: s 52(3). See SI 2009/816 and SI 2009/421 above. An order under the 2006 Act s 51 (i) may be made only with the consent of the Treasury, and (ii) may be made only if a draft has been laid before and approved by resolution of each House of Parliament: s 52(4). Regulations under s 51 (A) may be made only with the consent of the Treasury, and (B) are subject to annulment in pursuance of a resolution of either House of Parliament: s 52(5). A reference in s 51 to anything in connection with immigration or nationality includes a reference to anything in connection with an enactment (including an enactment of a jurisdiction outside the United Kingdom) that relates wholly or partly to immigration or nationality: s 52(6).

NOTES 22-28--In prescribing a fee under *ibid* s 51 in connection with a matter specified in the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 42(2), the Secretary of State may prescribe an amount which is intended to exceed the administrative costs of determining the application or undertaking the process and reflect benefits that the Secretary of State thinks are likely to accrue to the person who makes the application, to whom the application relates or by or for whom the process is undertaken, if the application is successful or the process is completed: s 42(1) (amended by 2006 Act Sch 2 para 6(2), Sch 3). Those matters are (1) anything done under, by virtue of or in connection with a provision of the British Nationality Act 1981 or of the former nationality Acts (within the meaning given by the 1981 Act s 50(1)), (2) an application for leave to remain in the United Kingdom, (3) an application for the variation of leave to enter, or remain in, the United Kingdom, (4) the 2002 Act s 10 (see PARA 85), (5) an application or process in connection with sponsorship of persons seeking leave to enter or remain in the United Kingdom, (6) a work permit, and (7) any other document which relates to employment and is issued for a purpose of immigration rules or in connection with leave to enter or remain in the United Kingdom: 2004 Act s 42(2) (substituted by 2006 Act Sch 2 para 6(3); and amended by UK Borders Act 2007 s 20(2)). Regulations under the 2006 Act s 51(3), specifying the

amount of a fee for a claim, application, service, process or other matter in respect of which an order has been made under s 51(1) or (2), may specify an amount which reflects (in addition to any costs referable to the claim, application, service, process or other matter) costs referable to (a) any other claim, application, service, process or matter in respect of which the Secretary of State has made an order under s 51(1) or (2), (b) the determination of applications for entry clearances (within the meaning given by the Immigration Act 1971 s 33(1)), (c) the determination of applications for transit visas under the Immigration and Asylum Act 1999 s 41, or (d) the determination of applications for certificates of entitlement to the right of abode in the United Kingdom under the 2002 Act s 10: 2004 Act s 42(2A) (added by 2007 Act s 20(3)). The amount of a fee under the Consular Fees Act 1980 s 1 in respect of a matter specified in heads (b)-(d) above may be set so as to reflect costs referable to any claim, application, service, process or other matter in respect of which the Secretary of State has made an order under the 2006 Act s 51(1) or (2): 2004 Act s 42(3A) (added by 2007 Act s 20(4)). See further 2004 Act s 42(4)-(8).

NOTE 22--1981 Act s 41(3)(b) repealed: 2006 Act Sch 2 para 1(b)(ii), Sch 3. SI 1996/444 replaced: British Nationality (Fees) Regulations 2003, SI 2003/3157 (amended by SI 2005/651, SI 2005/2114).

TEXT AND NOTE 30--1981 Act s 41(3) amended: 2006 Act Sch 2 para 1(b)(i).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(1) INTRODUCTION/7. United Kingdom nationals.

7. United Kingdom nationals.

While the term 'British nationality' is used to refer to the various forms of British status governed by the law of the United Kingdom¹, the term 'British national' is not a term of United Kingdom law². However, the term 'national of the United Kingdom' has a meaning in United Kingdom law by virtue of European Community law, which uses the concept 'nationals of a member state'. In European Community law, it is for each member state to define who are its nationals³. For the purposes of European Community law, 'national' in relation to the United Kingdom refers to: (1) British citizens⁴; (2) British subjects who have the right of abode in the United Kingdom and are therefore outside the scope of United Kingdom immigration control⁵; and (3) British overseas territories citizens⁶ who acquire their citizenship from a connection with Gibraltar⁷.

1 The terms nationality and citizenship tend to be used synonymously in United Kingdom law. As to citizenship see paras 8, 23 et seq post. The term 'British nationality' was sometimes used to refer to the status of citizen of the United Kingdom and colonies and of British subject under previous nationality law: see eg the British Nationality Act 1948 s 32(7) (repealed); and *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Ross-Clunis* [1991] 2 AC 439, [1991] 3 All ER 353, HL. As to citizenship of the United Kingdom and colonies see paras 16-21 post. As to British subjects see paras 9, 66-71 post. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 For a discussion of the term 'British national' see *R v Secretary of State for the Home Department, ex p Thakrar* [1974] QB 684 at 709-710, [1974] 2 All ER 261 at 272-273, CA, per Lawton LJ (applicant claimed to be a British protected person; held that 'British nationals' have no underlying or inherent right to admission to the United Kingdom, even if they have nowhere else to go, and they are subject to relevant United Kingdom legislation). See also para 72 note 9 post. As to the scope of the common law right of abode see *DPP v Bhagwan* [1972] AC 60, [1970] 3 All ER 97, HL. As to the right of abode see also paras 14, 22 post.

3 See Case C-192/99 *R v Secretary of State for the Home Department, ex p Manjit Kaur* [2001] ECR I-1237, sub nom *R (on the application of Kaur) v Secretary of State for the Home Department* [2001] All ER (EC) 250, ECJ.

4 This does not include a British citizen from the Channel Islands and Isle of Man: see the Treaty of Accession (Brussels, 22 January 1972; TS 16 (1979); Cmnd 7461), Third Protocol. See also note 7 *infra*.

5 As to British subjects see paras 9, 66-71 *post*.

6 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 *post*.

7 New Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'Nationals' (Rome, 31 December 1982; TS 67 (1983); Cmnd 9062). See also Case C-192/99 *R v Secretary of State for the Home Department, ex p Manjit Kaur* [2001] ECR I-1237, sub nom *R (on the application of Kaur) v Secretary of State for the Home Department* [2001] All ER (EC) 250, ECJ (confirming the meaning of United Kingdom national).

Note that when British citizenship was extended to British overseas territories citizens (see the British Overseas Territories Act 2002 s 3; and para 25 *post*), the term 'national' was not redefined to exclude British citizens from the British overseas territories. As to British overseas territories (formerly known as dependent territories) see para 44 note 1 *post*.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(1) INTRODUCTION/8. British citizens, British overseas territories citizens, British overseas citizens and British national (overseas) status.

8. British citizens, British overseas territories citizens, British overseas citizens and British national (overseas) status.

From 1 January 1949 to 31 December 1982¹, United Kingdom nationality law provided for a single citizenship², namely citizenship of the United Kingdom and colonies³. From 1 January 1973⁴, holders of this single citizenship were distinguished according to whether or not they had the right of abode in the United Kingdom⁵.

The British Nationality Act 1981, which came into force on 1 January 1983⁶, abolished this single status and created three categories of citizenship: (1) British citizenship⁷; (2) British overseas territories citizenship⁸; (3) British overseas citizenship⁹. British national (overseas) status was created with effect from 1 July 1987, but this is not a full citizenship¹⁰.

Only British citizenship carries with it the right of abode in the United Kingdom¹¹. Holders of the other categories of citizenship and those with British national (overseas) status are subject to immigration control¹².

1 *I*e between the date of commencement of the British Nationality Act 1948 (see para 5 note 7 *ante*) and that of the British Nationality Act 1981 (see note 6 *infra*; and para 5 note 1 *ante*).

2 See the British Nationality Acts 1948 to 1965. As to the British Nationality Acts 1948 to 1965 see para 5 note 5 *ante*. As to the repeal and the continued relevance of the British Nationality Acts 1948 to 1965 see para 5 *ante*.

The terms 'citizenship' and 'nationality' tend to be used synonymously in United Kingdom law. As to United Kingdom nationals see para 7 *ante*. As to Commonwealth citizens see para 11 *post*.

3 As to citizenship of the United Kingdom and colonies see the British Nationality Act 1948 Pt II (ss 4-22) (repealed); and paras 16-21 *post*.

4 *I*e the date on which provisions of the Immigration Act 1971 came into force: see para 83 note 2 *post*.

5 Certain Commonwealth citizens also had the right of abode: see para 22 heads (4)-(5) *post*. As to the right of abode prior to 1 January 1983 see para 22 *post*. As to the right of abode generally see paras 14, 85 *post*. As to the meaning of 'United Kingdom' see para 5 note 1 *ante*.

6 *I*e the date of commencement of the British Nationality Act 1981: see para 5 note 1 *ante*.

7 See *ibid* Pt I (ss 1-14) (as amended); the British Nationality (Falkland Islands) Act 1983; the British Nationality (Hong Kong) Act 1990; and paras 23-43 post.

8 See the British Nationality Act 1981 Pt II (ss 15-25) (as amended); and paras 44-57 post. The dependent territories are now referred to as overseas territories and consequently British dependent territories citizens and British dependent territories citizenship are now styled British overseas territories citizens and British overseas territories citizenship respectively: see the White Paper *Partnership for Progress and Prosperity--Britain and the Overseas Territories* (Cm 4264) (1999); and the British Overseas Territories Act 2002 ss 1, 2. Since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship: see s 3; and para 25 post.

9 See the British Nationality Act 1981 Pt III (ss 26-29) (as amended); and paras 58-62 post.

10 See the Hong Kong Act 1985 s 2, Schedule para 2; the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 4 (as amended); and paras 63-65 post.

11 See note 5 *supra*; and para 14, 84-85 post.

12 See the Immigration Act 1971 s 1 (as amended); and para 83 et seq post.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(1) INTRODUCTION/9. British subjects.

9. British subjects.

Prior to 1 January 1949¹, the status of British subject was the single common nationality of those owing allegiance to the British Crown².

From 1949 to 1982 inclusive, the class of British subjects³ included all citizens of the United Kingdom and colonies⁴, all citizens of the Commonwealth countries mentioned in the British Nationality Act 1948⁵, and certain Irish citizens⁶. Some British subjects held that status only, without citizenship⁷.

From 1 January 1983⁸, the status of British subject ceased to be a common status enjoyed in addition to citizenship and became a miscellaneous, residual and disappearing category⁹.

1 I.e. the date of commencement of the British Nationality Act 1948: see para 5 note 7 ante.

2 The term was introduced by the Union with Scotland Act 1706. The status of subject was originally governed by common law, but increasingly modified and codified by statute: see 1350 (25 Edw 3 Stat 2); 1708 (7 Anne c 5); 1711 (10 Anne c 5); 1730 (4 Geo 2 c 21); 1772 (13 Geo 3 c 21); 1844 (7 & 8 Vict c 66); 1870 (33 & 34 Vict c 14); and the British Nationality and Status of Aliens Acts 1914 to 1943. As to the British Nationality and Status of Aliens Acts 1914 to 1943 see para 5 note 9 ante.

3 From 1 January 1949 to 31 December 1982 the terms 'British subject' and 'Commonwealth citizen' had the same meaning: see the British Nationality Act 1948 s 1(2) (repealed). As to Commonwealth citizens see para 11 post.

4 See *ibid* s 1(1) (repealed). As to citizens of the United Kingdom and colonies see paras 16-21 post. As to the repeal and the continued relevance of the British Nationality Acts 1948 to 1965 see para 5 ante.

5 See the British Nationality Act 1948 s 1(1) (repealed). The reference in the text to Commonwealth countries is a reference to any country mentioned in s 1(3) (see para 11 note 4 post), which was amended from time to time by various Acts and Orders in Council and is now repealed.

6 See *ibid* s 2 (repealed). See also note 9 *infra*. As to Irish British subjects see para 67 post.

7 As to British subjects without citizenship see *ibid* ss 13(1), 16, 32(7), Sch 3 (all repealed); the British Nationality Act 1965 (repealed); and paras 18, 68 post. See also note 9 *infra*.

8 le the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

9 In any enactment or instrument passed or made after 1 January 1983, 'British subject' means a person who has the status of a British subject under the British Nationality Act 1981: s 51(2). In relation to any time after 1 January 1983, any reference in any enactment or instrument passed or made before that date to a person who is a British subject (or a British subject without citizenship) by virtue of the British Nationality Act 1948 s 2, s 13 or s 16 (all repealed) or by virtue of the British Nationality Act 1965 (repealed) (see the text and notes 6-7 supra) is to be construed as a reference to a person who is a British subject under the British Nationality Act 1981: s 51(3)(c). As to British subject status under the British Nationality Act 1981 see further paras 66-71 post.

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/2. British Nationality/(1) Introduction/10. British protected persons.

10. British protected persons.

The status of British protected person¹ arose as a result of the government of the United Kingdom exercising some form of administration or control over territories which were not colonies or otherwise part of the Crown's dominions². Although there are no longer any such territories, some persons have retained British protected person status; nobody is now eligible to acquire it save certain persons with a British protected person parent who would otherwise be stateless³.

British protected persons are not aliens⁴; they have no right of abode in the United Kingdom⁵ but are subject to United Kingdom immigration control⁶; and it seems that, at least for some purposes, they may not even hold British nationality⁷.

1 As to British protected persons see further paras 72-76 post.

2 See *R v Secretary of State for the Home Department, ex p Thakrar* [1974] QB 684 at 709-710, [1974] 2 All ER 261 at 272-273, CA, per Lawton LJ; and para 72 post.

3 See para 72 post.

4 See para 72 post. As to aliens see para 13 post.

5 As to the right of abode see para 14 post. See also para 22 post.

6 See para 72 post. As to immigration control see para 83 et seq post.

7 See *R v Secretary of State for the Home Department, ex p Thakrar* [1974] QB 684, [1974] 2 All ER 261, CA; *R v Chief Immigration Officer, Gatwick Airport, ex p Harjendar Singh* [1987] Imm AR 346; and para 72 post.

British protected persons lose that status upon acquisition of a citizenship under the British Nationality Act 1981 or another nationality (see the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 10; and para 72 et seq post), although they could, coincidentally, be citizens of the United Kingdom and colonies (see para 72 post). As to citizens of the United Kingdom and colonies see paras 16-21 post.

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/2. British Nationality/(1) Introduction/11. Commonwealth citizens.

11. Commonwealth citizens.

From 1 January 1949 to 31 December 1982¹ the term 'Commonwealth citizen' had the same meaning as 'British subject'², and included a person who was a citizen of the United Kingdom and colonies³ or of a country mentioned in the relevant provision of the British Nationality Act

1948⁴, or who qualified in some other way as a British subject⁵. The British Nationality Act 1981 introduced a new list of countries whose citizens are Commonwealth citizens⁶, and the terms 'Commonwealth citizen' and 'British subject' are no longer synonymous⁷. Since the commencement of the British Nationality Act 1981⁸, the following, and no others, have the status of Commonwealth citizen⁹: every person who is¹⁰ a British citizen¹¹, a British overseas territories citizen¹², a British national (overseas)¹³, a British overseas citizen¹⁴ or a British subject, or who is a citizen of any country¹⁵ which is mentioned in the relevant provision of the British Nationality Act 1981¹⁶.

Commonwealth citizens may vote¹⁷ and sit in Parliament¹⁸.

1 The difference between the date of commencement of the British Nationality Act 1948 (see para 5 note 7 ante) and that of the British Nationality Act 1981 (see para 5 note 1 ante).

2 British Nationality Act 1948 s 1(2) (repealed). As to British subjects see paras 9 ante, 66-71 post.

3 See *ibid* s 1(1) (repealed); and para 9 ante. As to citizens of the United Kingdom and colonies see paras 16-21 post.

4 See *ibid* s 1(1) (repealed); and para 9 ante. The reference in the text is a reference to any country mentioned in s 1(3), which was amended from time to time by various Acts and Orders in Council and is now repealed.

The countries mentioned in s 1(3) as originally enacted (the 'original Commonwealth countries') were: Canada; Australia; New Zealand; South Africa; Newfoundland; India; Pakistan; Southern Rhodesia and Ceylon. The countries mentioned in s 1(3) immediately before its repeal were: Canada; Australia; New Zealand; India; Ceylon; Ghana; Malaysia; the Republic of Cyprus; Nigeria; Sierra Leone; Tanzania; Jamaica; Trinidad and Tobago; Uganda; Kenya; Malawi; Zambia; Malta; the Gambia; Guyana; Botswana; Lesotho; Singapore; Barbados; Mauritius; Swaziland; Tonga; Fiji; the Bahamas; Grenada; Bangladesh; Seychelles; Solomon Islands; Tuvalu; Dominica; Kiribati; Saint Vincent and the Grenadines; Papua New Guinea; Western Samoa; Nauru; the New Hebrides; Zimbabwe. Newfoundland became part of Canada in 1949: see the Newfoundland (Consequential Provisions) Act 1950. South Africa left the Commonwealth in 1961, effective in United Kingdom law on 31 May 1962 (although it rejoined in 1994: see note 16 *infra*): see the South Africa Act 1962. Pakistan left the Commonwealth in 1972, effective in United Kingdom law on 1 September 1973 (although it rejoined in 1989: see note 16 *infra*): see the Pakistan Act 1973. Southern Rhodesia was treated as an independent Commonwealth country for the purposes of British nationality law but remained constitutionally a colony; between 1958 (for purposes of British nationality law, although it joined in 1953) and 1964 it was part of the Federation of Rhodesia and Nyasaland (see the British Nationality Act 1958; and the Rhodesia and Nyasaland Act 1963); it remained within the Crown's dominions in United Kingdom law until independence within the Commonwealth as Zimbabwe in 1980 (see the Southern Rhodesia Act 1965; the Southern Rhodesia Act 1979; the Zimbabwe Act 1979; and the Zimbabwe (Independence and Membership of the Commonwealth) (Consequential Provisions) Order 1980, SI 1980/701). Ceylon became Sri Lanka in 1972 (see the Sri Lanka Republic Act 1972) and the New Hebrides attained independence within the Commonwealth under the name Vanuatu in 1980 (see the New Hebrides Act 1980). As to the Commonwealth generally see **COMMONWEALTH**.

In any enactment or instrument passed or made before the commencement of the British Nationality Act 1981 (ie 1 January 1983: see para 5 note 1 ante), for any reference to the British Nationality Act 1948 s 1(3) there is to be substituted a reference to the British Nationality Act 1981 Sch 3 (as amended) (see note 16 *infra*), unless the context makes it inappropriate: s 52(1).

5 See para 9 ante.

6 See note 16 *infra*.

7 The British Nationality Act 1981 provides that the expressions 'British subject' and 'Commonwealth citizen', where they appear in any enactment or instrument passed or made before its commencement (ie 1 January 1983: see para 5 note 1 ante), have the same meaning: s 51(1). In connection with a moment in time prior to 1 January 1983, those expressions both refer to: (1) a person who under the British Nationality Act 1948 was at that time a citizen of the United Kingdom and colonies; (2) a person who, under any enactment then in force in a country mentioned in s 1(3) (see note 4 *supra*) as then in force, was at that time a citizen of that country; and (3) any other person who had at that time the status of a British subject under the British Nationality Act 1948 or any other enactment then in force: British Nationality Act 1981 s 51(1)(a). See further para 9 ante. In connection with any time on or after 1 January 1983, those expressions both generally refer to a person who has the status of Commonwealth citizen under the British Nationality Act 1981 (see the text and notes 8-16 *infra*): s 51(1)(b). See, however, s 51(3)(c); and para 9 note 9 ante.

However, in any enactment or instrument passed or made after 1 January 1983, the expressions have different meanings: see s 51(2). In such enactments or instruments, 'Commonwealth citizen' means a person who has the status of a Commonwealth citizen under the British Nationality Act 1981 (see the text and notes 8-16 *infra*): s 51(2). As to the meaning of 'British subject' in such enactments or instruments see para 9 note 9 *ante*.

For the purposes of the British Nationality Act 1981 itself, 'Commonwealth citizen' means a person who has the status of a Commonwealth citizen under that Act: s 50(1).

8 *le* 1 January 1983: see para 5 note 1 *ante*.

9 See the British Nationality Act 1981 s 37(1) (amended by the British Nationality (Falkland Islands) Act 1983 s 4(3); the British Overseas Territories Act 2002 ss 2(2)(b), 5, Sch 1 para 4; and the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(1), (3)).

10 *le* under the British Nationality Act 1981, the British Nationality (Falkland Islands) Act 1983, the British Overseas Territories Act 2002, or the Hong Kong (British Nationality) Order 1986, SI 1986/948.

11 As to British citizens and citizenship see paras 8 *ante*, 23-43 *post*.

12 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 *ante*, 44-57 *post*.

13 As to British national (overseas) status see paras 8 *ante*, 63-65 *post*.

14 As to British overseas citizens see paras 8 *ante*, 58-62 *post*.

15 *le* under any enactment for the time being in force in that country: see the British Nationality Act 1981 s 37(1)(b).

16 See *ibid* s 37(1) (as amended: see note 9 *supra*). The reference in the text is a reference to any country mentioned in Sch 3 (as amended) (see *infra*). Her Majesty may by Order in Council amend Sch 3 by the alteration of any entry, the removal of any entry, or the insertion of any additional entry: s 37(2). Any such Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament: s 37(3).

The countries mentioned in Sch 3 (as amended) are: Antigua and Barbuda; Australia; the Bahamas; Bangladesh; Barbados; Belize; Botswana; Brunei; Cameroon; Canada; Republic of Cyprus; Dominica; Fiji; the Gambia; Ghana; Grenada; Guyana; India; Jamaica; Kenya; Kiribati; Lesotho; Malawi; Malaysia; Maldives; Malta; Mauritius; Mozambique; Namibia; Nauru; New Zealand; Nigeria; Pakistan; Papua New Guinea; St Christopher and Nevis; St Lucia; St Vincent and the Grenadines; Seychelles; Sierra Leone; Singapore; Solomon Islands; South Africa; Sri Lanka; Swaziland; Tanzania; Tonga; Trinidad and Tobago; Tuvalu; Uganda; Vanuatu; Western Samoa; Zambia; Zimbabwe: Sch 3 (amended by the Brunei and Maldives Act 1985 s 1, Schedule para 8; the St Christopher and Nevis Modification of Enactments Order 1983, SI 1983/882; the British Nationality (Brunei) Order 1983, SI 1983/1699; the British Nationality (Pakistan) Order 1989, SI 1989/1331; the British Nationality (Namibia) Order 1990, SI 1990/1502; the British Nationality (South Africa) Order 1994, SI 1994/1634; and the British Nationality (Cameroon and Mozambique) Order 1998, SI 1998/3161). Cyprus became a republic in 1960, but the Sovereign Base Areas of Akrotiri and Dhekelia remain a British overseas territory: see the Cyprus Act 1960 s 2(1); the British Nationality Act 1981 s 50(1), Sch 6 (as amended); and para 44 note 1 *post*. South Africa (which withdrew in 1961: see note 4 *supra*) rejoined the Commonwealth in 1994; Pakistan (which left in 1972: see note 4 *supra*) rejoined in 1989; and Fiji rejoined the Commonwealth in 1997 after leaving in 1987. Membership of the Commonwealth may be suspended. At the date at which this volume states the law, Pakistan and Zimbabwe were suspended. References in the British Nationality Act 1981 to any country mentioned in Sch 3 (as amended) include references to the dependencies of that country: s 50(12). As to the Commonwealth generally see **COMMONWEALTH**.

17 See the Representation of the People Act 1983 ss 1(1)(c), 2(1)(c) (both as substituted); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) paras 110, 112.

18 The Act of Settlement (1700 or 1701) s 3 (as amended) disqualifies certain persons from membership of either House of Parliament, but the disqualification does not apply in relation to Commonwealth citizens: see the British Nationality Act 1981 s 52(6), Sch 7. See also **PARLIAMENT** vol 78 (2010) PARA 899. As to the citation of the Act of Settlement see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 35.

UPDATE

11 Commonwealth citizens

NOTE 16--Rwanda also mentioned in British Nationality Act 1981 Sch 3 (amended by SI 2010/246).

TEXT AND NOTES 17, 18--Act of Settlement s 3 modified, 1981 Act Sch 7 amended: see the Electoral Administration Act 2006 s 18, Sch 2; and **ELECTIONS AND REFERENDUMS** vol 15(2) (2007 Reissue) PARA 231.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(1) INTRODUCTION/12. Irish citizens.

12. Irish citizens.

Citizens of the Republic of Ireland¹ are not Commonwealth citizens² and are not aliens³. Certain Irish citizens retain the status of British subject⁴.

Any law in force on 31 December 1948 in any part of the United Kingdom and colonies⁵ continues to have effect in relation to citizens of the Republic of Ireland, until provision to the contrary is made by the authority having power to alter that law⁶.

Irish citizens may vote⁷ and sit in Parliament⁸.

1 The Ireland Act 1949 recognised and declared that the Republic of Ireland, formerly known as Eire, ceased as from 18 April 1949 to be part of His Majesty's dominions: see s 1 (amended by the Northern Ireland Constitution Act 1973 s 41(1), Sch 6 Pt I). The Republic of Ireland is not, however, a foreign country: see the Ireland Act 1949 s 2(1); the British Nationality Act 1981 s 50(1) (as amended); and para 6 note 15 ante.

2 As to Commonwealth citizens see para 11 ante.

3 As to aliens see para 13 post.

4 As to Irish British subjects see para 67 post; and as to British subjects generally see paras 9 ante, 66-71 post.

5 If any law in force at the date of commencement of the British Nationality Act 1948, whether by virtue of a rule of law or an Act of Parliament or any other enactment or instrument whatsoever, and any law which by virtue of any Act of Parliament passed before that date comes into force on or after that date: see s 3(2). Section 3(2) also refers to any law in force at that date in any protectorate or United Kingdom trust territory (see para 17 note 6 post), but no protectorates or United Kingdom trust territories now remain.

6 See the British Nationality Act 1948 s 3(2); and the Ireland Act 1949 ss 3, 4 (s 3 amended by the British Nationality Act 1981 s 52(6), Sch 7). As to limitation of liability in respect of crimes outside the United Kingdom and colonies see para 82 post.

7 See the Representation of the People Act 1983 ss 1(1)(c), 2(1)(c) (both as substituted); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) paras 110, 112.

8 The Act of Settlement (1700 or 1701) s 3 (as amended) disqualifies certain persons from membership of either House of Parliament, but the disqualification does not apply in relation to citizens of the Republic of Ireland: see the British Nationality Act 1981 s 52(6), Sch 7. See also **PARLIAMENT** vol 78 (2010) PARA 899. As to the citation of the Act of Settlement see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 35.

UPDATE

12 Irish citizens

TEXT AND NOTES 7, 8--Act of Settlement s 3 modified, 1981 Act Sch 7 amended: see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 231.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(1) INTRODUCTION/13. Aliens.

13. Aliens.

An alien is a person who is neither a Commonwealth citizen¹ nor a British protected person² nor a citizen of the Republic of Ireland³. Aliens therefore include both persons having the nationality or citizenship of some other sovereign state recognised by the United Kingdom⁴, and stateless persons. A person is stateless if no state exists according to the municipal law of which he is its national⁵.

Aliens may not vote⁶, nor may they sit in Parliament⁷. An alien may generally acquire, hold, inherit, succeed to and dispose of real and personal property⁸. An alien is triable in the ordinary way⁹. It is a criminal offence for an alien to attempt or do any act calculated or likely to cause sedition or disaffection amongst the forces of Her Majesty or Her Majesty's allies, or amongst the civilian population¹⁰, or to promote or attempt to promote industrial unrest in any industry in which he has not been bona fide engaged for at least the two immediately preceding years in the United Kingdom¹¹. In certain circumstances an alien may be employed in the Civil Service¹².

Aliens do not have, and cannot as aliens acquire, the right of abode in the United Kingdom¹³ and they are subject to immigration control¹⁴. EEA nationals are in a special position by virtue of the provisions of European Community law¹⁵.

1 As to Commonwealth citizens see para 11 ante.

2 As to British protected persons see paras 10 ante, 72-76 post.

3 British Nationality Act 1981 s 50(1). This definition also applies in relation to any time after the date of commencement of the British Nationality Act 1981 (ie 1 January 1983: see para 5 note 1 ante) for the purposes of any statutory provision, whether passed or made before or after that date, and for the purposes of any other instrument whatever made after that date: see s 51(4). See also the British Nationality Act 1948 ss 3(3), 32(1) (s 32(1) now repealed).

4 Whether a person is a national or citizen of any such country is, in general, a matter for the law of that country, though probably the United Kingdom would not recognise the claim of another country to confer citizenship upon a person who had no connection with it, or to deprive a person of its citizenship in a manner abhorrent to human rights; further, changes during time of war in nationality of enemy aliens according to the law of the enemy country (whether newly promulgated or pre-existing) will not be recognised until the end of hostilities; and a high standard of proof may be required from a person who appears to be an enemy alien but claims not to be: *Stoeck v Public Trustee* [1921] 2 Ch 67; *Oppenheimer v Cattermole* [1976] AC 249, [1975] 1 All ER 538, HL (and see the cases cited therein); Convention on Certain Questions relating to the Conflict of Nationality Laws (The Hague, 12 April 1930; TS 33 (1937); Cmd 5553) arts 1, 2. See also *Bibi v Secretary of State for the Home Department* [1987] Imm AR 340, CA. As to a person claiming nationality of a territory not recognised by Her Majesty's government as a state see *Hak Rok Djang and Tai il Djou v Secretary of State for the Home Department* [1985] Imm AR 125, IAT. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

5 *Stoeck v Public Trustee* [1921] 2 Ch 67 at 78; Convention relating to the Status of Stateless Persons (New York, 28 September 1954; TS 41 (1960); Cmd 1098) art 1.1. If the court is satisfied that a person is a national of another state according to its law, it will so hold, even though the authorities of that state deny the nationality; this may result in statelessness: *Bibi v Secretary of State for the Home Department* [1987] Imm AR 340, CA. Every stateless person has duties to the country in which he finds himself, in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order; save where the Convention relating to the Status of Stateless Persons contains more favourable provisions, stateless persons are to be accorded the same treatment as is accorded to aliens generally; a stateless person lawfully present should not be expelled save on grounds of national security or public order: arts 2, 7.1, 31. As to the limited effect of the Convention in domestic law see *R v Immigration Appeal Tribunal, ex p Patel* [1987] Imm AR 164. See also the United Nations Convention on the Reduction of Statelessness (New York, 30 August 1961; TS 158 (1975); Cmd 6364). Note that a stateless person who is unable to return to the country of his former

habitual residence falls within the definition of a refugee: *R v Chief Immigration Officer, Gatwick Airport, ex p Harjendar Singh* [1987] Imm AR 346; Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906) art 1A(2). See, however, *Revenko v Secretary of State for the Home Department* [2001] QB 601, CA (a well-founded fear of persecution is a prerequisite of refugee status; mere statelessness or inability to return to the country of former habitual residence is insufficient). As to the meaning of 'refugee' see para 239 post.

6 As to the right to vote see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) para 110 et seq.

7 See the Act of Settlement (1700 or 1701) s 3 (as amended); and **PARLIAMENT** vol 78 (2010) PARA 899. As to the citation of the Act of Settlement see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 35.

8 See the Status of Aliens Act 1914 s 17 (amended by the British Nationality Act 1948 s 34(3), Sch 4 Pt II). The Status of Aliens Act 1914 was formerly called the British Nationality and Status of Aliens Act 1914: see para 5 note 9 ante.

The Status of Aliens Act 1914 s 17 (as amended) does not operate so as to: (1) confer any right on an alien to hold real property situated out of the United Kingdom; or (2) qualify an alien for any office or for any municipal, parliamentary, or other franchise; or (3) qualify an alien to be the owner of a British ship; or (4) entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as s 17 (as amended) expressly gives him; or (5) affect any estate or interest in real or personal property to which any person has or may become entitled in pursuance of any disposition made before 12 May 1870, or in pursuance of any devolution by law on the death of any person dying before that day: s 17 proviso.

As to the restriction on the employment of aliens on British ships registered in the United Kingdom see the Aliens Restriction (Amendment) Act 1919 s 5 (amended by the Former Enemy Aliens (Disabilities Removal) Act 1925 s 1, Sch 2). As from a day to be appointed the Aliens Restriction (Amendment) Act 1919 s 5 (as amended) is repealed by the Merchant Shipping Act 1995 s 314, Sch 12. At the date at which this volume states the law no such day had been appointed.

9 See the Status of Aliens Act 1914 s 18 (amended by the British Nationality Act 1948 Sch 4 Pt II). An alien owes local allegiance and is entitled to claim protection when within the realm (including overseas possessions); the allegiance continues as long as the protection is afforded or claimed, and apparently even if it is temporarily unavailable: *Calvin's Case* (1608) 7 Co Rep 1a; *De Jager v A-G of Natal* [1907] AC 326, PC; *Markwald v A-G* [1920] 1 Ch 348, CA; *Joyce v DPP* [1946] AC 347, [1946] 1 All ER 186, HL; *Re P (GE) (An Infant)* [1965] Ch 568, [1964] 3 All ER 977, CA (a court in the United Kingdom had wardship jurisdiction over an alien infant of stateless parents whose father took him to Israel). Though an alien is unlikely to be called for jury service as he will not be on the electoral register, if he is called he may not sit on a jury if challenged by any party to the proceedings: see the Aliens Restriction (Amendment) Act 1919 s 8. As from a day to be appointed s 8 is repealed by the Criminal Justice Act 1972 ss 64(2), 66(7), Sch 6 Pt I. At the date at which this volume states the law no such day had been appointed.

10 See the Aliens Restriction (Amendment) Act 1919 s 3(1). The penalty is a maximum of 10 years' imprisonment on conviction on indictment, or three months' imprisonment on summary conviction: see s 3(1) (amended by virtue of the Criminal Justice Act 1948 s 1(1)).

11 See the Aliens Restriction (Amendment) Act 1919 s 3(2). The penalty is imprisonment for a maximum of three months on summary conviction: see s 3(2).

12 See the Aliens' Employment Act 1955 s 1 (amended by the European Communities (Employment in the Civil Service) Order 1991, SI 1991/1221, art 2). See also the Aliens Restriction (Amendment) Act 1919 s 6; and the Act of Settlement (1700 or 1701) s 3 (as amended). As to the employment in the Civil Service of Northern Ireland of nationals of the member states of the European Communities see the European Communities (Employment in the Civil Service) Order 1991, SI 1991/1221, art 3.

13 As to the right of abode see para 14 post. See also para 22 post. The right of abode can only be acquired by acquiring British citizenship: see paras 8 ante, 23-43 post. As there are no restrictions in United Kingdom law on holding multiple nationalities, a person can be a foreign national and a British citizen simultaneously.

14 As to immigration control see para 83 et seq post. The Immigration Act 1971 is not to be taken to supersede or impair any Crown prerogative power exercisable in relation to aliens: see s 33(5); and para 84 post. As to prerogative powers generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 367 et seq; **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) para 46 et seq.

15 Although they do not have the right of abode, EEA nationals who are workers or who otherwise have the right of free movement, and their families, do not require leave to enter the United Kingdom: see paras 14, 225-237 post. As to EEA nationals see para 225 et seq post. Each member state defines its own nationals.

UPDATE

13 Aliens

NOTE 12--1955 Act s 1 further amended: SI 2007/617. Nationals of EEA states, Switzerland and Turkey may also be employed in the Civil Service of Northern Ireland: see SI 1991/1221 arts 3-7 (art 3 amended, arts 4-7 added by SI 2007/617).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(1) INTRODUCTION/14. The right of abode.

14. The right of abode.

A person has the right of abode in the United Kingdom¹ if:

- 19 (1) he is a British citizen²; or
- 20 (2) he is a Commonwealth citizen³ who was a Commonwealth citizen having the right of abode immediately before the commencement of the British Nationality Act 1981⁴, and who has not ceased to be a Commonwealth citizen in the meanwhile⁵.

Those having the right of abode in the United Kingdom are free to live in, and to come and go into and from, the United Kingdom without let or hindrance⁶ except such as may be required⁷ to enable their right to be established⁸ or as may be otherwise lawfully imposed upon any person⁹. Those not having that right may live, work and settle in the United Kingdom by permission and subject to regulation and control of their entry into, stay in and departure from the United Kingdom¹⁰. Certain EEA nationals and their families may have the right to live in, and to come and go into and from the United Kingdom, but this right arises by virtue of European Community law provisions for the free movement of workers and others within the European Community, and they do not have the right of abode in the United Kingdom under domestic law¹¹.

The right of abode is enacted as part of immigration rather than nationality law¹²; but it is an important adjunct of British citizenship since, with the diminishing exception of the Commonwealth citizens mentioned in head (2) above, only British citizens have the right of abode. British overseas territories citizens, British overseas citizens, and British nationals (overseas) do not have the right of abode in the United Kingdom¹³. Their right to live in, enter, or leave any other place, including any British overseas territory¹⁴ by virtue of which they hold their British nationality, depends upon the law in force in that place or territory¹⁵ and is not part of the domestic law of the United Kingdom.

1 He under the Immigration Act 1971 s 2 (as substituted) (see the text and notes 2-5 infra); and para 85 post. Under s 2 (as originally enacted), certain citizens of the United Kingdom and colonies had the right of abode (see para 22 post); only citizens of the United Kingdom and colonies who previously had the right of abode became British citizens, and so continued to enjoy that right, on 1 January 1983 (see the British Nationality Act 1981 s 11; and para 24 post). As to citizenship of the United Kingdom and colonies see paras 16-21 post. As to British citizens and citizenship see paras 8 ante, 23-43 post. Those who did not have the right of abode became British overseas territories citizens (then known as British dependent territories citizens) (see paras 8 ante, 44-57 post) or British overseas citizens (see paras 8 ante, 58-62 post): see ss 23, 26 (both as amended); and paras 45, 59 post. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Immigration Act 1971 s 2(1)(a) (s 2 substituted by the British Nationality Act 1981 s 39(2)). See also para 85 post.

3 As to Commonwealth citizens see para 11 ante.

4 le 1 January 1983: see para 5 note 1 ante. As to the right of abode before that date see note 1 supra; and para 22 post. As to Commonwealth citizens having the right of abode before that date see para 22 heads (4), (5) post.

5 Immigration Act 1971 s 2(1)(b) (as substituted: see note 2 supra). See also para 85 post. In general, the Immigration Act 1971 applies to such Commonwealth citizens as if they were British citizens: see s 2(2) (as substituted and amended); and para 85 post. As to restrictions on the right of abode of polygamous wives see the Immigration Act 1988 s 2; and para 85 note 11 post.

6 This does not, however, give a British citizen the right to bring in a spouse who does not have the right of abode, without complying with the requirements of immigration law: *R v Secretary of State for the Home Department, ex p Rofathullah* [1989] QB 219, [1988] 3 All ER 1, CA; cf *R v Secretary of State for the Home Department, ex p Phansopkar* [1976] QB 606, [1975] 3 All ER 497, CA (where a marriage before 1 January 1983 gave the wife the right of abode). See, however, the text and note 11 infra; and para 13 note 15 ante.

7 le under and in accordance with the Immigration Act 1971.

8 A person seeking to enter the United Kingdom and claiming to have the right of abode must prove that he has that right by means of an appropriate passport or a certificate of entitlement: see *ibid* s 3(9) (as substituted); and paras 78, 85 post.

9 See *ibid* s 1(1); and para 84 post.

10 See *ibid* s 1(2); and para 86 post.

11 See paras 225-237 post. As to EEA nationals see para 225 et seq post. Each member state defines its own nationals. See also para 13 note 15 ante.

The residence right of EEA nationals and their families should not be seen as an additional and freestanding form of right of abode (although in many cases the practical effect will be the same); its basis is an extension throughout the European Economic Area of a right already held in one member state. This residence right is subject to satisfaction of the conditions upon which the right depends in Community law: see para 225 et seq post.

12 As to immigration law see para 83 et seq post.

13 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 ante, 44-57 post. As to British overseas citizens see paras 8 ante, 58-62 post. As to British national (overseas) status see paras 8 ante, 63-65 post. Such persons, and holders of any other form of British nationality (ie British subjects and British protected persons), have no right to enter the United Kingdom, even if expelled from their place of residence with nowhere else to go; they are subject to United Kingdom immigration law: *R v Secretary of State for the Home Department, ex p Thakrar* [1974] QB 684, [1974] 2 All ER 261, CA. As to the right of entry see also *East African Asians v United Kingdom* (1973) 3 EHRR 76. As to the scope of the common law right of abode see *DPP v Bhagwan* [1972] AC 60, [1970] 3 All ER 97, HL.

14 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 post.

15 *Thornton v Police* [1962] AC 339, [1962] 3 All ER 88n, PC (citizenship of the United Kingdom and colonies did not confer the right to live in a colony (Fiji), and an exclusionary immigration rule of that colony was not repugnant to the British Nationality Act 1948). The same is, no doubt, true of each of the types of citizenship into which citizenship of the United Kingdom and colonies has been split.

UPDATE

14 The right of abode

TEXT AND NOTES--The Secretary of State may by order remove from a specified person a right of abode in the United Kingdom which he has under the 1971 Act s 2(1)(b): s 2A(1) (s 2A added by Immigration, Asylum and Nationality Act 2006 s 57(1)). Such an order may be made only if the Secretary of State thinks it would be conducive to the public good for the person to be excluded or removed from the United Kingdom: s 2A(2). Such an order may be revoked by order of the Secretary of State: s 2A(3). While an order has effect in relation to a person, s 2(2) will not apply to him and any certificate of entitlement granted to him will have no effect: s 2A(4).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(1) INTRODUCTION/15. Nationality and the Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

15. Nationality and the Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

The Convention for the Protection of Human Rights and Fundamental Freedoms (1950)¹ itself contains no right to a nationality² and no rights or freedoms based on nationality, but the Fourth Protocol³ guarantees certain nationality-based rights approximating to the United Kingdom concept of the right of abode⁴. The Fourth Protocol has been signed but not ratified by the United Kingdom. However, it is possible for the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) that have been ratified to protect individuals in circumstances that are associated with the Fourth Protocol⁵.

1 The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 The right to a nationality has been most recently guaranteed in the European Convention on Nationality (Strasbourg, 6 November 1997; ETS 166 (2000)) art 4a. Unlike previous treaties relating to nationality, the European Convention on Nationality is a comprehensive nationality code which is expected to be widely ratified across Europe. The Convention entered into force on 1 March 2000, but at the date at which this volume states the law it had not been signed by the United Kingdom.

3 The Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Fourth Protocol (Strasbourg, 16 September 1963; ETS 46; Cmd 2309) (as amended).

4 See *ibid* art 3.

5 See eg *East African Asians v United Kingdom* (1973) 3 EHRR 76, where the European Commission of Human Rights found that there could be a breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 3 in the absence of ratification of the Fourth Protocol. As to the European Commission of Human Rights, which has now been replaced by the new European Court of Human Rights, see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 172.

UPDATE

15 Nationality and the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

TEXT AND NOTES--The Immigration Rules para 340 extend to human rights claims: see PARA 240.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(2) PREVIOUS NATIONALITY LAW/16. In general.

(2) PREVIOUS NATIONALITY LAW

16. In general.

A full account of previous nationality and immigration law, now repealed, is beyond the scope of this work; but two aspects of that law as it was prior to 1 January 1983¹ are crucial for the

understanding of the law now in force: citizenship of the United Kingdom and colonies², and the right of abode³. Citizenship of the United Kingdom and colonies no longer exists, having been replaced by new categories of citizenship⁴; the right of abode still exists but the provisions determining who holds it have been repealed and replaced⁵. In order to determine the current national status of a former citizen of the United Kingdom and colonies (and sometimes his or her children), it is necessary to determine how that citizenship was acquired, and whether the person had the right of abode in the United Kingdom. The right of abode is dealt with in immigration rather than nationality legislation⁶, but it must be treated in any account of British nationality law because: (1) although the right to live in the country of one's nationality is normally inherent in that nationality⁷, yet in the case of British nationality the position is more complex⁸; (2) the right of abode under previous immigration law was an important qualification for acquisition of British citizenship when it came into existence⁹; and (3) with the exception of a diminishing class of Commonwealth citizens, only British citizens now have the right of abode¹⁰.

1 le the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

2 See paras 17-21 post. For a full account see Fransman *British Nationality Law* (2nd Edn, 1998).

3 See para 22 post.

4 As to citizenship since 1 January 1983 see paras 8 ante, 23 et seq post.

5 As to the right of abode since 1 January 1983 see para 14 ante.

6 As to immigration law see para 83 et seq post.

7 See eg the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), Fourth Protocol (Strasbourg, 16 September 1963; ETS 46; Cmnd 2309) art 3, which has been signed but not ratified by the United Kingdom. See further para 15 ante.

8 Some people without British nationality have this right, while many people with British nationality do not: see paras 14 ante, 22 post.

9 See paras 22, 24 post. British citizenship is one of the categories of citizenship introduced on 1 January 1983 by the British Nationality Act 1981: see paras 8 ante, 23-43 post.

10 See para 14 ante. As to Commonwealth citizens see para 11 ante.

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/2. British Nationality/(2) Previous Nationality Law/17. Citizenship of the United Kingdom and colonies; acquisition on 1 January 1949.

17. Citizenship of the United Kingdom and colonies; acquisition on 1 January 1949.

Upon the coming into force of the British Nationality Act 1948 on 1 January 1949¹ the following British subjects became citizens of the United Kingdom and colonies:

- 21 (1) one who was born or naturalised in the United Kingdom and colonies² or became a British subject by annexation of territory³;
- 22 (2) one whose father⁴ was born or naturalised in the United Kingdom or the colonies or became a British subject by annexation of territory⁵;
- 23 (3) one who was born in a protectorate, protected state or United Kingdom trust territory⁶;
- 24 (4) one who did not qualify under heads (1) to (3) above and was not an Irish citizen⁷ or an actual or potential citizen of a Commonwealth country⁸;

- 25 (5) one who was the wife or former wife of a man who acquired citizenship under heads (1) to (4) above or would have done so but for his death⁹.

Certain persons were deemed to have been British subjects on 31 December 1948¹⁰.

A person was potentially a citizen of one of the original Commonwealth countries¹¹ which had as yet no citizenship law¹² if he, or his nearest ancestor in the male line who acquired British nationality otherwise than by reason of his parentage¹³, acquired British nationality either by birth within the territory of that country, or by naturalisation granted by the government of that country, or by the annexation of any territory then forming part of that country; in addition, a woman married or formerly married to any such person was a potential citizen of the country of which her husband was, or would but for his death have been, a potential citizen¹⁴.

1 See para 5 note 7 ante.

2 The territories comprising the United Kingdom and colonies on 1 January 1949. A person was naturalised (before 1 January 1949) in the United Kingdom and colonies if a certificate of naturalisation was granted to him by the Secretary of State or (under the British Nationality and Status of Aliens Act 1914 (now known as the Status of Aliens Act 1914: see para 5 note 9 ante)) by the government of any British possession other than a country listed in the British Nationality Act 1948 s 1(3) (now repealed) (see note 11 infra; and para 11 note 4 ante) as a Commonwealth country, or if he was deemed (by the British Nationality and Status of Aliens Act 1914 s 27(2) (now repealed)) to be a person to whom a certificate of naturalisation was granted, if the certificate in which his name was included was granted by the Secretary of State or by the government of any such British possession, or if he was deemed to be a naturalised British subject by reason of his residence with his father or mother: British Nationality Act 1948 s 32(1) (now repealed). A certificate of naturalisation is required, neither a seaman's Certificate of Nationality and Identity (issued 1937) nor a National Registration Identity Card (issued 1940) was sufficient: *Uddin v Secretary of State for the Home Department* [1990] Imm AR 104, CA. See also *A-G v HRH Prince Ernest Augustus of Hanover* [1957] AC 436, [1957] 1 All ER 49, HL (effect of 4 Anne c 16 (1705) naturalising the descendants of the Electress Sophia of Hanover). In addition, any person who, by the law in force immediately before 1 January 1949 in any colony or protectorate, enjoyed the privileges of naturalisation within that colony or protectorate only, was deemed to have become immediately before 1 January 1949 a British subject naturalised in the United Kingdom and colonies: British Nationality Act 1948 s 32(6) (now repealed). As to the repeal and the continued relevance of the British Nationality Act 1948 see para 5 ante. As to the Secretary of State see para 2 ante.

3 Ibid s 12(1) (now repealed). In *R v Ketter* [1940] 1 KB 787, [1939] 1 All ER 729, CCA (in relation to Palestine), mandated territory was not annexed and its inhabitants did not become British subjects. But see *Lesa v A-G of New Zealand* [1983] 2 AC 20, [1982] 3 WLR 898, PC (in relation to Western Samoa).

4 A man is the 'father', for these purposes, only of his legitimate children: British Nationality Act 1948 s 32(2) (now repealed).

5 Ibid s 12(2) (now repealed). Such a person was a citizen by descent only: s 12(8) (now repealed). As to the significance of citizenship by descent see para 19 post.

6 The territory which had that status on 1 January 1949: see ibid ss 12(3), 30, 32(1) (all now repealed); and the British Protectorates, Protected States and Protected Persons Order in Council 1949, SI 1949/140 (now revoked). 'United Kingdom trust territory' meant a territory administered by the government of the United Kingdom under the trusteeship system of the United Nations: British Nationality Act 1948 s 32(1) (now repealed). See also para 72 notes 1, 13 post.

7 The same in the case of certain Irish citizens born before 6 December 1922: see the Ireland Act 1949 s 5(2) (now repealed).

8 The country listed in the British Nationality Act 1948 s 1(3) as originally enacted (see note 11 infra; and para 11 note 4 ante): see ss 12(4), 32(7) (both now repealed); *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Ross-Clunis* [1991] 2 AC 439, [1991] 3 All ER 353, HL. Such a person was a citizen by descent only: British Nationality Act 1948 s 12(8) (now repealed). As to acquisition by potential citizens of Commonwealth countries see para 18 post.

9 Ibid s 12(5) (now repealed).

10 See ibid s 14 (now repealed) (women who ceased to be British subjects by reason of marriage), s 15 (now repealed) (persons who ceased to be British subjects by failure to make a declaration of retention of British

nationality), s 17 (now repealed) (persons whose birth occurred before 1 January 1949 but was not registered until afterwards), s 32(6) (now repealed) (persons with local naturalisation in a colony or protectorate). See also ss 16, 23, 24 (all now repealed) (relating to minors). As to Irish British subjects born before 6 December 1922 who remained British subjects see the Ireland Act 1949 s 5; and para 67 post.

11 le Canada, Australia, New Zealand, South Africa, Newfoundland, India, Pakistan, Southern Rhodesia, Ceylon: see the British Nationality Act 1948 s 1(3) (as originally enacted); and para 11 note 4 ante.

12 See para 18 post.

13 For this purpose, 'ancestor' included father, and 'acquired British nationality' referred to acquisition of the status of British subject under the law in force prior to 1 January 1949. Thus a person born in Athens in 1948, whose father became a British subject by birth in 1905 in the Colony of the Cape of Good Hope (later part of South Africa) but became a citizen of the United Kingdom and colonies only because his own father had been born in the United Kingdom, did not himself become a citizen of the United Kingdom and colonies (in 1949) or, therefore, a British citizen (in 1983), because the father acquired British nationality by being born a British subject, not by his acquisition of citizenship in 1949. In other words, the child's father was indeed the nearest ancestor in the male line to acquire British nationality otherwise than by parentage, and so the child became a potential citizen of South Africa on 1 January 1949 and not a citizen of the United Kingdom and colonies under the British Nationality Act 1948 s 12(4) (now repealed) (see head (4) in the text): *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Ross-Clunis* [1991] 2 AC 439, [1991] 3 All ER 353, HL; revsg [1991] Imm AR 316, CA.

14 British Nationality Act 1948 s 32(7) (now repealed).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(2) PREVIOUS NATIONALITY LAW/18. Citizenship of the United Kingdom and colonies; acquisition by potential citizens of Commonwealth countries.

18. Citizenship of the United Kingdom and colonies; acquisition by potential citizens of Commonwealth countries.

A person who was a British subject on 31 December 1948 and was on 1 January 1949 potentially a citizen of any of the then existing Commonwealth countries¹, but not actually a citizen of any of those countries or a citizen of the United Kingdom and colonies or of the Republic of Ireland², remained from that date a British subject without citizenship until (or unless³) he became a citizen of the United Kingdom and colonies, a citizen of an independent Commonwealth country, a citizen of the Republic of Ireland⁴, a citizen of Pakistan (as of 1 September 1973⁵), or an alien⁶.

Upon the coming into force of a citizenship law in any of the original Commonwealth countries which did not already have one on 1 January 1949, potential citizens of that country who were still British subjects without citizenship automatically became citizens of the United Kingdom and colonies, unless they then became citizens of that (or any other) country⁷. 'Citizenship law' meant an enactment of the legislature of the relevant country declared by order of the Secretary of State⁸ at the request of that country to be an enactment making provision for citizenship thereof; orders were made⁹ in respect of all the relevant countries except India and Pakistan¹⁰. Accordingly this provision for automatic citizenship of the United Kingdom and colonies was never triggered in the case of potential citizens of India or Pakistan¹¹. Former citizens of the Federation of Rhodesia and Nyasaland who did not become citizens of Southern Rhodesia on 1 January 1964 (when the Federation was dissolved) became citizens of the United Kingdom and colonies¹². This was a unique provision because it provided for automatic acquisition of citizenship of the United Kingdom and colonies by persons who had actually acquired citizenship of a particular Commonwealth country (before losing it again).

1 See para 11 note 4 ante.

2 See, however, para 17 note 7 ante.

3 As to those who have remained to this day British subjects without citizenship, now British subjects simpliciter, see para 68 post.

4 See, however, para 17 note 7 ante.

5 See para 11 note 4 ante.

6 British Nationality Act 1948 s 13(1) (now repealed). For these purposes, an 'alien' was someone who was not a British subject, a British protected person or a citizen of the Republic of Ireland: s 32(1) (now repealed). As to the repeal and the continued relevance of the British Nationality Act 1948 see para 5 ante.

7 Ibid s 13(2) (now repealed); *Uddin v Secretary of State for the Home Department* [1990] Imm AR 104, CA. Such persons were deemed to be citizens by descent only: British Nationality Act 1948 s 13(3) (now repealed). As to the significance of citizenship by descent see para 19 post.

8 As to the Secretary of State see para 2 ante.

9 See the Citizenship Law (Canada) Order 1948, SI 1948/2779 (which extended to Newfoundland: see the Newfoundland (Consequential Provisions) Act 1950); the Citizenship Law (Australia) Order 1949, SI 1949/170; the Citizenship Law (New Zealand) Order 1949, SI 1949/7; the Citizenship Law (Union of South Africa) Order 1949, SI 1949/2448; the Citizenship Law (Southern Rhodesia) Order 1950, SI 1950/61; and the Citizenship Law (Ceylon) Order 1948, SI 1948/2780.

10 Although those countries have laws providing for citizenship, no orders were made so they do not fall within the definition: see *Gowa v A-G* (1984) 129 Sol Jo 131, CA; affd [1985] 1 WLR 1003, HL.

11 See also para 68 post.

12 See the Rhodesia and Nyasaland Act 1963; and the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963, SI 1963/2085, s 74(2).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(2) PREVIOUS NATIONALITY LAW/19. Citizenship of the United Kingdom and colonies; acquisition on or after 1 January 1949.

19. Citizenship of the United Kingdom and colonies; acquisition on or after 1 January 1949.

From 1949 to 1982 inclusive, citizenship was acquired as follows:

- 26 (1) by birth in the United Kingdom and colonies, except by those whose father was entitled to diplomatic immunity and was not a citizen of the United Kingdom and colonies, and anyone whose father was an enemy alien¹ and who was born in a place under enemy occupation²;
- 27 (2) by adoption in the United Kingdom by a citizen (in the case of a joint adoption, a male citizen) of the United Kingdom and colonies³;
- 28 (3) by descent⁴ from a father who was a citizen of the United Kingdom and colonies at the time of the child's birth⁵, save that if the father was a citizen by descent only⁶, the child would not be a citizen unless: (a) he or his father was born in a protectorate, protected state, mandated territory or trust territory⁷ or any place in a foreign country⁸ where the Crown had jurisdiction over British subjects; or (b) the birth occurred in a foreign country and was registered at a United Kingdom consulate within a year⁹; or (c) the father was in Crown service¹⁰ at the time of the birth; or (d) the child was born in a Commonwealth country but did not become a citizen of that country under its citizenship law¹¹;

- 29 (4) by registration by the Secretary of State or, in a colony, protectorate or United Kingdom trust territory, by the Governor¹², or, in a Commonwealth country, by the High Commissioner¹³;
- 30 (5) by naturalisation (the normal method for aliens and British protected persons) by the Secretary of State or, in a colony, protectorate or United Kingdom trust territory, by the Governor¹⁴;
- 31 (6) by incorporation of territory¹⁵.

1 For the meaning of 'alien' see para 18 note 6 ante. The British Nationality Act 1948 did not define 'enemy alien'.

2 See the British Nationality Act 1948 s 4 (amended by the Diplomatic Privileges Act 1964 s 5(2); and now repealed). As to the repeal and the continued relevance of the British Nationality Act 1948 see para 5 ante. From 16 September 1964 if the person would be stateless as a result of the proviso, he became a citizen of the United Kingdom and colonies if his mother was one; and a new-born infant found abandoned within the United Kingdom and colonies was presumed to have been born there unless the contrary was shown: British Nationality (No 2) Act 1964 s 2 (now repealed).

3 See the Adoption of Children Act 1949 s 8, the Adoption Act 1950 s 16, the Adoption Act 1958 s 19(1) and the Adoption Act 1964 s 1(3) (all now repealed). Overseas adoption within the meaning of the Adoption Act 1968 s 4 (now repealed) and its replacement, the Adoption Act 1976 s 72(2) (prospectively amended), did not (and does not) confer citizenship: see *Secretary of State for the Home Department v Lofthouse* [1981] Imm AR 166, IAT; *R v Secretary of State for the Home Department, ex p Brassey* [1989] Imm AR 258; *Tahid v Secretary of State for the Home Department* [1991] Imm AR 157, CA. As to adoption generally see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) para 323 et seq.

4 Citizenship of the United Kingdom and colonies was not inconsistent with the simultaneous possession of British protected person status (see paras 10 ante, 72-76 post): *Motala v A-G* [1992] 1 AC 281, [1991] 4 All ER 682, HL (citizenship of the United Kingdom and colonies acquired by descent and British protected person status acquired by birth in Northern Rhodesia).

5 Registration as a citizen of the United Kingdom and colonies did not confer citizenship by descent upon an existing child: *Uddin v Secretary of State for the Home Department* [1990] Imm AR 104, CA. A man was the 'father' only of his legitimate children: British Nationality Act 1948 s 32(2) (now repealed).

6 This was a term of art (as it still is: see paras 40, 55 post), covering not only persons who became citizens by descent under *ibid* s 5 (now repealed) (or British subjects by descent under previous law) but also persons whose citizenship, acquired by virtue of other provisions, was deemed to be by descent only for the purpose of s 5 (now repealed): see eg ss 12(8), 13, Sch 3 para 3 (all now repealed); the British Nationality (No 2) Act 1964 s 1(4) (now repealed); and paras 17-18 ante.

7 As to protectorates and protected states see para 17 note 6 ante. A trust territory (as opposed to a United Kingdom trust territory, ie one administered by the United Kingdom government: see para 17 note 6 ante) was a territory administered by the government of any part of His Majesty's dominions under the trusteeship system of the United Nations; and a mandated territory was a territory administered by the government of any part of His Majesty's dominions in accordance with a mandate from the League of Nations: British Nationality Act 1948 s 32(1) (now repealed).

8 See *ibid* ss 30, 32(1) (both now repealed). A foreign country was a country other than the United Kingdom, a colony, a Commonwealth country listed in s 1(3) (now repealed) (see para 11 note 4 ante), the Republic of Ireland, or a protectorate, protected state, mandated territory or trust territory: s 32(1) (now repealed). See also the Foreign Jurisdiction Acts 1890 and 1913.

9 It could be registered later, with the actual or deemed permission of the Secretary of State; and he was not to withhold permission if the person would otherwise have been stateless: British Nationality (No 2) Act 1964 s 3 (now repealed). As to the Secretary of State see para 2 ante.

10 Ie under His Majesty's government in the United Kingdom or in Northern Ireland, or under the government of any colony, protectorate, protected state, United Kingdom mandated territory or trust territory, whether or not the service was in any part of the dominions: British Nationality Act 1948 s 32(1) (now repealed). A Secretary of State's certificate that a person was in such Crown service was conclusive evidence of the fact: s 27(4) (now repealed).

11 See *ibid* s 5 (now repealed).

12 *Ibid* s 8(1) (s 8 amended by the Immigration Act 1971 s 2, Sch 1; now repealed).

13 British Nationality Act 1948 s 8(2) (as amended (see note 12 *supra*); now repealed); s 12(7) (now repealed). Some of those who acquired citizenship by registration were deemed to be citizens by descent only: see note 6 *supra*.

The conditions of entitlement to and eligibility for registration between 1 January 1949 and 31 December 1982 were complex and changing: see ss 5A, 6, 7, 9, 12(6) (all now repealed); the British Nationality Act 1958 s 3 (now repealed); the British Nationality Act 1964 s 1 (now repealed); the British Nationality (No 2) Act 1964 ss 1, 3, Schedule (all now repealed); the British Nationality Act 1965 ss 1, 4 (both now repealed); and the Immigration Act 1971 s 2(5), Sch 1 (both now repealed). It is the fact and place of registration (and for the purposes of citizenship by descent, the provision under which the registration was effected: see paras 40, 55 *post*), not the conditions of eligibility, which affect current national status. In the absence of documentary evidence such as a certified copy of the entry or a certificate of citizenship or a passport (which is evidence not proof), it is necessary to establish whether registration was effected from the register itself. See also *Gowa v A-G* [1985] 1 WLR 1003, HL (an application for registration was not granted in 1951 in the mistaken belief that the applicants were already citizens; it was held that an application could be considered and granted notwithstanding changes in the law and the fact that the applicants had ceased to fulfil the conditions of eligibility). As to the possible effect of estoppel see para 77 *post*.

14 See the British Nationality Act 1948 ss 10, 18, Sch 2 (all now repealed); and the Commonwealth Immigrants Act 1962 s 12(2) (now repealed).

Again, it is the fact and place of naturalisation rather than the conditions of eligibility which are relevant. Naturalisation was effected by the grant of a certificate of naturalisation, rather than by entry in a register: British Nationality Act 1948 s 10 (now repealed).

15 See *ibid* s 11 (now repealed), which provided that persons specified in a consequential Order in Council would acquire citizenship. No orders were ever made under this provision. However, the uninhabited island of Rockall was incorporated into the United Kingdom on 10 February 1972 by the Island of Rockall Act 1972.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(2) PREVIOUS NATIONALITY LAW/20. Citizenship of the United Kingdom and colonies; automatic loss.

20. Citizenship of the United Kingdom and colonies; automatic loss.

Although provision was made for a person to acquire citizenship of the United Kingdom and colonies¹ by birth or registration or naturalisation in a colony, or by virtue of his father's birth in a colony, during the years 1949 to 1982 the vast majority of colonies achieved independence and most of them became independent Commonwealth countries², with citizenship laws of their own³. Provision was made for loss of citizenship of the United Kingdom and colonies by specified persons who became, or were eligible to become, citizens of the newly independent country, subject to various provisos for retention. Though many such provisions had a common format, providing for automatic loss of citizenship of the United Kingdom and colonies in specified circumstances, they differed in detail between countries; accordingly, in order to ascertain whether a one-time citizen of the United Kingdom and colonies, connected with a former colony, still had that status immediately before 1 January 1983, so as to acquire one of the forms of British nationality introduced on that date, it is necessary to consult the legislation affecting that colony⁴.

1 See para 19 *ante*. As to citizenships already in existence on 1 January 1949 para 17 *ante*.

2 Such countries were added to the list in the British Nationality Act 1948 s 1(3) (now repealed) (see para 11 note 4 *post*). As to the repeal and the continued relevance of the British Nationality Act 1948 see para 5 *ante*.

3 Citizenship was normally provided for in the independence constitution enacted by the United Kingdom legislature, often supplemented or replaced by legislation of the country's own legislature: see note 4 *infra*; and **COMMONWEALTH**.

4 It may be necessary to investigate not only the former colony with which the subject of investigation appears to be connected, but also any other colony with which the parents, or even grandparents, of such person had connections. See Fransman *British Nationality Law* (2nd Edn, 1998). See also *Bulmer v A-G* [1955] Ch 558, [1955] 2 All ER 718; *Mohamed v Secretary of State for the Home Department* [1979-80] Imm AR 103, IAT (Kenya); *R v Secretary of State for the Home Department, ex p Mahaboob Bibi* [1985] Imm AR 134 (Burma and Mauritius); *Patel v Secretary of State for the Home Department* [1988] Imm AR 521, IAT (Zambia). For a case in which minors held the dual status of citizen of the United Kingdom and colonies and British protected person but automatically lost both upon independence of their country of birth (Zambia) see *Motala v A-G* [1992] 1 AC 281, [1991] 4 All ER 682, HL.

The precise conditions of automatic loss of citizenship of the United Kingdom and colonies are contained in the United Kingdom enactment providing for independence together with the citizenship law of the new independent country (of which some, but not all, were made by the United Kingdom). See further:

- 1 (1) the Aden, Perim and Kuria Muria Islands Act 1967; the British Nationality (Kuria Muria Islands) Order 1967, SI 1967/1778; and the British Nationality (People's Republic of Southern Yemen) Order 1968/1310;
- 2 (2) the Bahamas Independence Act 1973; and the Bahamas Independence Order 1973, SI 1973/1080;
- 3 (3) the Barbados Independence Act 1966; and the Barbados Independence Order 1966, SI 1966/1455;
- 4 (4) the Belize Act 1981; and the Belize Independence Order 1981, SI 1981/1107;
- 5 (5) the Botswana Independence Act 1966; and the Botswana Independence Order 1966, SI 1966/1171;
- 6 (6) the Cyprus Act 1960; the Republic of Cyprus Order in Council 1960, SI 1960/1368; and the British Nationality (Cyprus) Order 1960, SI 1960/2215;
- 7 (7) the Fiji Independence Act 1970; and the Fiji Independence Order 1970, dated 30 September 1970 (made under the royal prerogative);
- 8 (8) the Gambia Independence Act 1964; and the Gambia Independence Order 1965, SI 1965/135 (amended by SI 1970/1114);
- 9 (9) the Ghana Independence Act 1957; the British Nationality Act 1958; and the Ghana (Constitution) Order in Council 1957, SI 1957/277;
- 10 (10) the Guyana Independence Act 1966; and the Guyana Independence Order 1966, SI 1966/575;
- 11 (11) the Jamaica Independence Act 1962; and the Jamaica (Constitution) Order in Council 1962, SI 1962/1550;
- 12 (12) the Kenya Independence Act 1963; and the Kenya Independence Order in Council 1963, SI 1963/1968;
- 13 (13) the Kiribati Act 1979; and the Kiribati Independence Order 1979, SI 1979/719;
- 14 (14) the Lesotho Independence Act 1966; and the Lesotho Independence Order 1966, SI 1966/1172;
- 15 (15) the Malawi Independence Act 1964; and the Malawi Independence Order 1964, SI 1964/916;
- 16 (16) the Malaysia Act 1963;
- 17 (17) the Malta Independence Act 1964; and the Malta Independence Order 1964, SI 1964/1398;
- 18 (18) the Mauritius Independence Act 1968; and the Mauritius Independence Order 1968 (dated 4 March 1968);
- 19 (19) the Nigeria Independence Act 1960; and the Nigeria (Constitution) Order in Council 1960, SI 1960/1652;

- 20 (20) the Rhodesia and Nyasaland Act 1963; the British Nationality Act 1958; the Federation of Rhodesia and Nyasaland (Constitution) Order in Council 1953, SI 1953/1199; and the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963, SI 1963/2085 (amended by SI 1970/892);
- 21 (21) the Seychelles Act 1976; and the Seychelles Independence Order 1976, SI 1976/894;
- 22 (22) the Sierra Leone Independence Act 1961; and the Sierra Leone (Constitution) Order in Council 1961, SI 1961/741;
- 23 (23) the Solomon Islands Act 1978; and the Solomon Islands Independence Order 1978, SI 1978/783;
- 24 (24) the Swaziland Independence Act 1968; and the Swaziland Independence Order 1968, SI 1968/1377;
- 25 (25) the Tanganyika Independence Act 1961; and the Tanganyika (Constitution) Order in Council 1961, SI 1961/2274;
- 26 (26) the Trinidad and Tobago Independence Act 1962; and the Trinidad and Tobago (Constitution) Order in Council 1962, SI 1962/1875;
- 27 (27) the Tuvalu Act 1978; and the Tuvalu Independence Order 1978 (dated 25 July 1978);
- 28 (28) the Uganda Independence Act 1962; and the Uganda (Independence) Order in Council 1962, SI 1962/2175;
- 29 (29) the West Indies Act 1967; the Antigua and Barbuda Constitution Order 1981, SI 1981/1106; the Antigua and Barbuda Modification of Enactments Order 1981, SI 1981/1105; the Dominica Constitution Order 1978, SI 1978/1027 (amended by SI 1978/1521); the Dominica Modification of Enactments Order 1978, SI 1978/1030 (amended by SI 1978/1622); the Grenada Constitution Order 1973, SI 1973/2155; the Grenada Modification of Enactments Order 1973, SI 1973/2157; the St Lucia Constitution Order 1978, SI 1978/1901; the St Lucia Modification of Enactments Order 1978, SI 1978/1899; the St Vincent Constitution Order 1979, SI 1979/916; and the St Vincent Modification of Enactments Order 1979, SI 1979/917;
- 30 (30) the Zambia Independence Act 1964; and the Zambia Independence Order 1964, SI 1964/1652;
- 31 (31) the Zanzibar Act 1963.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(2) PREVIOUS NATIONALITY LAW/21. Citizenship of the United Kingdom and colonies; deprivation, renunciation and resumption.

21. Citizenship of the United Kingdom and colonies; deprivation, renunciation and resumption.

Registered and naturalised citizens of the United Kingdom and colonies could be deprived of their citizenship¹ on the ground that it was obtained by fraud, false representation or material concealment², and naturalised citizens could also be deprived of citizenship on the ground of disloyalty or disaffection, or trading or communicating with the enemy in time of war³, or 12 months' imprisonment (or more) in any country within five years of naturalisation⁴. The Secretary of State⁵ was required to give notice in writing of the ground on which he proposed to make a deprivation order⁶, and could not deprive a person of citizenship unless satisfied that it was not conducive to the public good that he should continue to be a citizen of the United Kingdom and colonies⁷. However, citizenship by naturalisation or registration acquired by fraud of a serious and causative nature may be of no effect⁸.

A citizen of the United Kingdom and colonies was entitled to renounce that citizenship⁹ (to assist those who were or wished to be citizens of a country which did not permit dual nationality), provided¹⁰ he had some other citizenship or nationality or acquired one within six months¹¹.

A person who had renounced citizenship of the United Kingdom and colonies in order to become or remain a citizen of a Commonwealth country¹² was entitled¹³ to be registered as a citizen of the United Kingdom and colonies provided he had a specified qualifying connection with the United Kingdom or with a protectorate or protected state¹⁴ or, if a woman, she had been married to a person who had, or would if living have had, such a connection¹⁵.

1 As to deprivation of British subject status see the British Nationality Act 1965 s 3 (now repealed). As to the repeal and the continued relevance of the British Nationality Acts 1948 to 1965 see para 5 ante.

2 British Nationality Act 1948 s 20(2) (now repealed). Registration of a minor under s 7(1) (now repealed) under a false name and parentage, on application of someone other than his parent or guardian, was invalid: *R v Secretary of State for the Home Department, ex p Parvaz Akhtar* [1981] QB 46, [1980] 2 All ER 735, CA. It is not clear whether the same was true of registration of an adult on his own application under the British Nationality Act 1948 s 6(1) (now repealed) under his true name but false parentage; but it probably was not, provided that on the true facts he qualified for registration: *Hamida Begum v Visa Officer, Islamabad* [1981] Imm AR 126, IAT.

3 British Nationality Act 1948 s 20(3)(a), (b) (now repealed).

4 Ibid s 20(3)(c) (now repealed). From 16 September 1964 a person could not be deprived of citizenship if he would as a result be stateless: British Nationality (No 2) Act 1964 s 4(1) (now repealed). Provisions relating to deprivation in the case of long residence abroad or deprivation of Commonwealth or Irish citizenship (ie the British Nationality Act 1948 ss 20(4), 21) were repealed in 1964.

5 As to the Secretary of State see para 2 ante.

6 British Nationality Act 1948 s 20(6) (now repealed). In some cases the person was entitled to an inquiry.

7 Ibid s 20(5) (now repealed). Cf paras 42-43, 57, 65 post.

8 See para 42 post.

9 Ie by declaration, registration of which terminated the citizenship: British Nationality Act 1948 s 19 (now repealed). The Secretary of State could withhold registration of a declaration made by a foreign national (ie one with dual nationality) in time of war.

10 Ie as from 25 May 1964.

11 British Nationality Act 1964 s 2 (now repealed). Cf paras 41, 56, 62, 65, 71, 76 post.

12 See para 11 ante; and **COMMONWEALTH**.

13 Ie as from 25 May 1964.

14 As to protectorates and protected states see para 17 note 6 ante.

15 British Nationality Act 1964 s 1 (now repealed). Now only British citizenship (see paras 8 ante, 23-43 post) and British overseas territories citizenship (formerly known as British dependent territories citizenship) (see paras 8 ante, 44-57 post) may be resumed in a similar manner: see paras 41, 56 post.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(2) PREVIOUS NATIONALITY LAW/22. The right of abode prior to 1 January 1983.

22. The right of abode prior to 1 January 1983.

The right of abode in the United Kingdom¹ was introduced into United Kingdom law on 1 January 1973², and under current law is a benefit of British citizenship³. In order to ascertain current national status, however, it is frequently necessary to consider the qualifications for the right of abode under previous law⁴. Prior to 1 January 1983⁵ the following enjoyed the right of abode in the United Kingdom⁶:

- 32 (1) a citizen of the United Kingdom and colonies who had that citizenship by birth, adoption, naturalisation or registration in the United Kingdom, the Channel Islands or the Isle of Man⁷, but not including a woman whose registration⁸ (irrespective of the date of it) was based on her marriage on or after 28 October 1971⁹ to a citizen of the United Kingdom and colonies¹⁰;
- 33 (2) a citizen of the United Kingdom and colonies born to or legally adopted¹¹ by a parent who had that citizenship at the time of the birth or adoption, if the parent either: (a) then had that citizenship by his birth, adoption, naturalisation or registration in the United Kingdom, the Channel Islands or the Isle of Man¹²; or (b) had been born to or legally adopted by a parent who at the time of that birth or adoption had that citizenship by his birth, adoption, naturalisation or registration in the United Kingdom, the Channel Islands or the Isle of Man¹³; but the reference to registration (of the parent or grandparent) did not include registration (irrespective of the date of it) of a woman on the basis of her marriage on or after 28 October 1971 to a citizen of the United Kingdom and colonies¹⁴;
- 34 (3) a citizen of the United Kingdom and colonies who had at any time been settled in the United Kingdom¹⁵, the Channel Islands or the Isle of Man and had at that time and while such a citizen been ordinarily resident¹⁶ there for the previous five years or longer¹⁷;
- 35 (4) a Commonwealth citizen¹⁸ born to or legally adopted by a parent who at the time of the birth or adoption had citizenship of the United Kingdom and colonies by his birth in the United Kingdom, the Channel Islands or the Isle of Man¹⁹;
- 36 (5) a woman who was a Commonwealth citizen and the wife of a man who fell within heads (1) to (4) above, or who but for his death before 1 January 1949 would have fallen within head (1) or head (2) above²⁰.

In relation to the parent of a child born after the parent's death, references to the time of the child's birth are to be read as references to the time of the parent's death²¹.

'Parent' includes the mother²² of an illegitimate child²³.

References to birth in the United Kingdom include birth on a ship or aircraft registered in the United Kingdom, or on an unregistered ship or aircraft of the government of the United Kingdom, and similarly with references to birth in the Channel Islands or the Isle of Man²⁴.

References to registration in the United Kingdom include registration in an independent Commonwealth country by the United Kingdom High Commissioner²⁵, but in the case of registration of minors only if the registration was effected before 28 October 1971²⁶. However, registration or naturalisation granted by the Governor of a colony, protectorate or United Kingdom trust territory does not constitute registration or naturalisation in the United Kingdom²⁷.

References to citizenship of the United Kingdom and colonies are, in relation to a time before the year 1949, to be construed as references to British nationality and, in relation to British nationality and to a time before 31 March 1922, 'the United Kingdom' means Great Britain and Ireland²⁸.

1 This was formerly also called 'patriality', those with the right being known as patrials; but these terms are now obsolete: see the Immigration Act 1971 s 2(6) (as in force prior to 1 January 1983); and the British

Nationality Act 1981 s 39(2), (6), Sch 4. As to the right of abode under the law as now in force see para 14 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante. See also the text and note 28 infra.

2 See the Immigration Act 1971 s 1(1); and para 14 ante. See also paras 84-85 post. The Immigration Act 1971 replaced restrictions on the rights of certain British subjects and citizens of the United Kingdom and colonies to enter the United Kingdom which were introduced by the Commonwealth Immigrants Act 1962 (repealed) and enlarged by the Commonwealth Immigrants Act 1968 (repealed).

3 See the Immigration Act 1971 s 2 (as substituted); and para 14 ante. See also para 85 post. As to British citizens and citizenship see paras 8 ante, 23-43 post.

4 See under *ibid* s 2 (as in force prior to 1 January 1983). As to the significance of the right of abode under previous law see eg para 24 post.

5 See the date on which the provisions of the Immigration Act 1971 s 2 were substituted by the British Nationality Act 1981 (see note 3 supra): see para 5 note 1 ante.

6 The right of abode is not capable of being conferred by administrative discretion or acquired by estoppel, but is something a person either is or is not entitled to under statute: *Christodoulidou v Secretary of State for the Home Department* [1985] Imm AR 179, IAT; *Secretary of State for the Home Department v Gold* [1985] Imm AR 66, IAT. As to estoppel see para 77 post.

7 Immigration Act 1971 ss 2(1)(a), 33(1) (s 2(1)(a) as in force prior to 1 January 1983).

8 See under the British Nationality Act 1948 s 6(2) (now repealed). As to the repeal and the continued relevance of the British Nationality Act 1948 see para 5 ante.

9 See the date on which the Immigration Act 1971 was passed.

10 *Ibid* s 2(2) (as in force prior to 1 January 1983).

11 For these purposes, 'legally adopted' means adopted in pursuance of an order made by any court in the United Kingdom, the Channel Islands or the Isle of Man or by any adoption specified as an overseas adoption by order of the Secretary of State under the Adoption Act 1976 s 72(2) (prospectively amended) or its predecessor, the Adoption Act 1968 s 4 (repealed); Immigration Act 1971 s 33(1) (as in force prior to 1 January 1983); and see *Tahid v Secretary of State for the Home Department* [1991] Imm AR 157, CA. Cf the current definition: see the Immigration Act 1971 s 33(1) (as amended); and para 161 note 2 post.

An overseas adoption may not confer citizenship: *Secretary of State for the Home Department v Lofthouse* [1981] Imm AR 166, IAT. See further **CONFLICT OF LAWS**.

12 Citizenship by birth in a colony is insufficient: *Pereira v Entry Clearance Officer, Bridgetown* [1979-80] Imm AR 79, IAT.

13 Immigration Act 1971 ss 2(1)(b), 33(1) (s 2(1)(b) as in force prior to 1 January 1983). See also *Hussein v Secretary of State for the Home Department* [1975] Imm AR 69.

14 Immigration Act 1971 s 2(2) (as in force prior to 1 January 1983).

15 For these purposes, a person was settled in the United Kingdom if he was ordinarily resident there without being subject under the immigration laws to any restriction on the period for which he could remain: *ibid* s 2(3)(d) (as in force prior to 1 January 1983). Cf the similar wording of s 33(2A) (as added) (see para 134 post). See also *Thomas Tak Sang Kwok v Secretary of State for the Home Department* [1984] Imm AR 226, IAT. Ordinary residence is not to be equated with domicile and accordingly a person could be settled without having the intention to remain permanently: *Raj Begum* (6 August 1985, unreported), IAT; applying *Shah v Barnet London Borough Council* [1983] 2 AC 309, [1983] 1 All ER 226, HL.

16 A person was not to be treated as ordinarily resident in the United Kingdom at a time when he was there in breach of the immigration laws: Immigration Act 1971 s 33(1), (2). A person who, albeit inadvertently, failed to apply for an extension of stay before his leave to remain expired was in the United Kingdom in breach of the immigration laws, however short the gap between expiry and application: *R v Secretary of State for the Home Department, ex p Margueritte* [1983] QB 180, [1982] 3 All ER 909, CA; *Shah v Barnet London Borough Council* [1983] 2 AC 309, [1983] 1 All ER 226, HL; *Immigration Appeal Tribunal v Chelliah* [1985] Imm AR 192, CA; *Dungarwalla v Secretary of State for the Home Department* [1989] Imm AR 476, IAT. This applied also to overstaying or unlawful entry before the coming into force of the Immigration Act 1971: *Azam v Secretary of State for the Home Department* [1974] AC 18, [1973] 2 All ER 765, HL; *Lui v Secretary of State for the Home Department* [1986] Imm AR 287; *Cheong* (20 February 1986, unreported) (4390), IAT; *Poon* (1 July 1991, unreported) (7904), IAT (rejecting the submission that under the Commonwealth Immigrants Acts 1962 and 1968 (both repealed) the grant of an extension of leave by the Secretary of State retrospectively validated

earlier periods of overstaying). For the meaning of 'ordinary residence' see also *Levene v IRC* [1928] AC 217, HL; *IRC v Lysaght* [1928] AC 234, HL; *University College, London v Newman* (1986) Times, 8 January, CA (nomad ordinarily resident within an area; see also *R v Immigration Appeal Tribunal, ex p Siggins* [1985] Imm AR 14; *Re Brauch* [1978] Ch 316, [1978] 1 All ER 1004, CA); *Britto v Secretary of State for the Home Department* [1984] Imm AR 93, IAT (ordinary residence in two places at once); *Osman* (13 June 1984, unreported) (3257), IAT; *Patel v Secretary of State for the Home Department* [1984] Imm AR 147, IAT; *R v Immigration Appeal Tribunal, ex p Ng* [1986] Imm AR 23.

17 Immigration Act 1971 s 2(1)(c) (as in force immediately before 1 January 1983). The five-year period had to be continuous, so an aggregate of five years' lawful residence broken by periods of overstay was not within the provision (*R v Immigration Appeal Tribunal, ex p Hamood* (7 February 1983, unreported), DC; *Secretary of State for the Home Department v Lai* (12 January 1984, unreported) (3087), IAT); and the period had to have been complete by 1 January 1983, so a period broken by overstaying could not be completed after that date (*Immigration Appeal Tribunal v Chelliah* [1985] Imm AR 192, CA). See also the cases cited in note 16 supra.

Note that while children born abroad before 1 January 1983 to a father who acquired citizenship by registration or naturalisation in the United Kingdom would have the right of abode (see head (2) in the text), children born abroad before 1 January 1983 to a father who, being already a citizen, acquired the right of abode by five years' residence would not have the right of abode; but children born abroad after 1 January 1983 to such a person will have the right of abode, because he will have become a British citizen and they will be born British citizens by descent (see paras 24, 26, 40 post).

18 As to Commonwealth citizens see para 11 ante.

19 Immigration Act 1971 s 2(1)(d) (as in force prior to 1 January 1983).

20 Ibid s 2(2) (as in force prior to 1 January 1983); *R v Secretary of State for the Home Department, ex p Phansopkar* [1976] QB 606, [1975] 3 All ER 497, CA. A woman marrying after 1 January 1983 does not acquire this right and is subject to immigration control: *Brahmbhatt v Chief Immigration Officer, Heathrow Airport* [1984] Imm AR 202, CA.

21 Immigration Act 1971 s 2(3) (as in force prior to 1 January 1983).

22 But not the father: *C v Entry Clearance Officer, Hong Kong* [1976] Imm AR 165, IAT; *Re M (an infant)* [1955] 2 QB 479, [1955] 2 All ER 911, CA.

23 Immigration Act 1971 s 2(3)(a) (as in force prior to 1 January 1983).

24 Ibid s 2(3)(b) (as in force prior to 1 January 1983).

25 Ie under the British Nationality Act 1948 s 6 (now repealed) or s 7 (now repealed), under arrangements made by virtue of s 8(2) (now repealed).

26 Ie the date when the Immigration Act 1971 was passed: s 2(4) (as in force prior to 1 January 1983).

27 *Keshwani v Secretary of State for the Home Department* [1975] Imm AR 38, IAT; *R v Immigration Appeal Tribunal, ex p de Sousa* [1977] Imm AR 6; *Mohamed v Secretary of State for the Home Department* [1979-80] Imm AR 103, IAT.

28 Immigration Act 1971 s 2(3)(c) (as in force prior to 1 January 1983).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/23. In general.

(3) BRITISH CITIZENSHIP

23. In general.

British citizenship is the primary category of British nationality, and is the only category carrying the right of abode in the United Kingdom¹. British citizenship may be acquired in various ways². It may be conferred by statute, and many people automatically acquired British citizenship on 1 January 1983 upon the commencement of the British Nationality Act 1981³.

British citizenship may also be acquired by birth, adoption or descent⁴ or by registration⁵ or naturalisation⁶.

1 As to the right of abode see para 14 ante. Even if they are nationals of other countries, Commonwealth citizens may be capable of having the right of abode in the United Kingdom if they acquired that right prior to 1983: see para 14 ante. As to Commonwealth citizens see para 11 ante.

Certain EEA nationals and their families may have the right to live in, and to come and go into and from the United Kingdom, but this right arises by virtue of European Community law provisions for the free movement of workers and others within the European Community, and they do not have the right of abode in the United Kingdom under domestic law: see paras 225-237 post. As to EEA nationals see para 225 et seq post. Each member state defines its own nationals.

2 In addition to the methods mentioned in the text, the principle of estoppel and legitimate expectation must be considered: see para 77 post.

3 See para 24 post. See also the British Overseas Territories Act 2002 s 3, under which British citizenship was conferred on most persons who were British overseas territories citizens immediately before 21 May 2002; and para 25 post. As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 ante, 44-57 post.

4 See para 26 post. As to citizenship by descent see para 40 post.

5 See paras 27-36 post.

6 See paras 37-39 post.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/24. Automatic acquisition on 1 January 1983.

24. Automatic acquisition on 1 January 1983.

With one proviso, all those who on 31 December 1982 were citizens of the United Kingdom and colonies¹ and had the right of abode in the United Kingdom² under the Immigration Act 1971 as then in force³ automatically became British citizens on 1 January 1983⁴. The proviso is that a person who was registered as a citizen of the United Kingdom and colonies on the ground that he was stateless and that his mother was a citizen of the United Kingdom and colonies at his birth⁵ did not become a British citizen unless one of the two following conditions was satisfied, namely that: (1) his mother became a British citizen automatically on 1 January 1983⁶ or would have done so but for her death; or (2) he had the right of abode in the United Kingdom on 31 December 1982 on the ground of previous settlement and five years' prior ordinary residence in the United Kingdom⁷.

A person automatically became a British citizen on 1 January 1983 if immediately before that date he was a citizen of the United Kingdom and colonies by virtue of having been registered as such in a Commonwealth country⁸ by the United Kingdom High Commissioner⁹ on the ground that: (a) he¹⁰ was a British subject on 31 December 1948¹¹ who would automatically have become a citizen of the United Kingdom and colonies on 1 January 1949¹² but for his citizenship or potential citizenship of a Commonwealth country; (b) he was descended in the male line from a person who was born or naturalised within the United Kingdom¹³; (c) he intended to make his ordinary place of residence within the United Kingdom and colonies; and (d) he had a close connection with the United Kingdom¹⁴.

A person automatically became a British citizen with effect from 1 January 1983¹⁵ if: (i) that person became a British overseas territories citizen¹⁶ on that date¹⁷; and (ii) immediately before that date: (A) that person was a citizen of the United Kingdom and colonies by birth,

naturalisation or registration in the Falkland Islands; or (B) one of that person's parents or grandparents was such a citizen or would have been but for his death; or (C) that person, being a woman, was the wife or former wife of a man who became a British citizen on 1 January 1983 by virtue of head (A) or head (B) above or would have done so but for his death¹⁸.

1 As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 See para 22 ante. A person had the right of abode in the United Kingdom on the basis of marriage to a citizen of the United Kingdom and colonies by registration only if the registration was completed before 1 January 1983: *R v Secretary of State for the Home Department, ex p Amina Bibi* [1995] Imm AR 185; affd sub nom *Amina Bibi v Secretary of State for the Home Department* [1996] Imm AR 175, CA.

4 British Nationality Act 1981 s 11(1). The date referred to in the text is the date on which the British Nationality Act 1981 came into force: see para 5 note 1 ante. In order to determine whether a person falls within s 11(1), it may be necessary to trace ancestry to determine whether a person automatically became a citizen of the United Kingdom and colonies on 1 January 1949 under the British Nationality Act 1948: see eg *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Ross-Clunis* [1991] 2 AC 439, [1991] 3 All ER 353, HL. See further para 17 ante. As to the repeal and the continued relevance of the British Nationality Acts 1948 to 1965 see para 5 ante. It may not always be clear whether a person became a British citizen on 1 January 1983, eg where the right of abode depends on establishing settlement and five years' ordinary residence at any time before 1 January 1983 under the Immigration Act 1971 s 2(1)(c) as then in force: see eg *Britto v Secretary of State for the Home Department* [1984] Imm AR 93, IAT; *Patel v Secretary of State for the Home Department* [1984] Imm AR 147, IAT. For the circumstances in which such a person is a British citizen by descent see the British Nationality Act 1981 s 14(1)(b); and para 40 post.

5 Ie under the British Nationality (No 2) Act 1964 s 1 (now repealed).

6 Ie under the British Nationality Act 1981 s 11(1), as a former citizen of the United Kingdom and colonies with the right of abode: see the text and notes 1-4 supra.

7 See *ibid* s 11(2). The right referred to in the text is a right by virtue of the Immigration Act 1971 s 2(1)(c) as then in force (ie excluding the right of abode acquired under other provisions): see para 22 head (3) ante.

A person who qualified under the British Nationality Act 1981 s 11(2) is a British citizen by descent: see para 40 post. Those excluded from British citizenship under s 11(2) became either British overseas territories citizens (then known as British dependent territories citizens) (see paras 8 ante, 44-57 post) or British overseas citizens (see paras 8 ante, 58-62 post).

8 Ie a country listed at the time of the registration as a Commonwealth country in the British Nationality Act 1948 s 1(3) (see para 11 note 4 ante), which was amended from time to time by various Acts and Orders in Council and is now repealed.

9 Ie under *ibid* s 12(6) (now repealed). The Secretary of State made arrangements for the exercise in any country mentioned in s 1(3) (now repealed) (see note 8 supra) of any of his functions under s 12(6) (now repealed) by the High Commissioner: see s 12(7) (now repealed). As to the Secretary of State see para 2 ante.

10 Or, if he was a minor at the date of registration, the parent who applied for registration.

11 Ie immediately prior to the commencement of the British Nationality Act 1948: see s 34(2) (now repealed).

12 Ie under *ibid* s 12(4) (now repealed): see para 17 ante.

13 Ie from a person possessing one of the qualifications specified in *ibid* s 12(1)(a), (b) (now repealed). For the purposes of the British Nationality Act 1981, a person is taken to have been naturalised in the United Kingdom if, but only if: (1) he was granted a certificate of naturalisation under any of the former nationality Acts by the Secretary of State or, in the Channel Islands or Isle of Man, the Lieutenant-Governor; or (2) he was deemed to be naturalised by virtue of the British Nationality and Status of Aliens Act 1914 s 27(2) (now repealed) on the basis of a certificate of naturalisation granted to his parents by the Secretary of State which included his name; or (3) he was deemed by virtue of the Naturalization Act 1870 s 10(5) (now repealed) to be naturalised because while he was a minor his parents were naturalised and he resided in the United Kingdom with them: see the British Nationality Act 1981 s 50(6)(a). See also *Re Carlton* [1945] Ch 280, [1945] 1 All ER 559; and para 17 note 2 ante. The British Nationality and Status of Aliens Act 1914 is now known as the Status of Aliens Act 1914: see para 5 note 9 ante.

14 British Nationality Act 1981 s 11(3). A person who qualified under the British Nationality Act 1981 s 11(3) is a British citizen by descent: see para 40 post.

Since a citizen of the United Kingdom and colonies whose father or grandfather was born or naturalised in the United Kingdom would have the right of abode in the United Kingdom and so qualify for automatic British citizenship under the British Nationality Act 1981 s 11(1) (see the text and notes 1-4 supra), s 11(3) only applies to persons who were registered under the British Nationality Act 1948 s 12(6) (now repealed) (see note 9 supra) on the ground of the birth or naturalisation in the United Kingdom of a more remote male ancestor.

15 Ie under the British Nationality (Falkland Islands) Act 1983, which received Royal Assent on 28 March 1983 but is deemed to have come into force on 1 January 1983: see ss 4(1), 5(2).

16 See paras 8 ante, 44-57 post.

17 Ie under the British Nationality Act 1981 s 23: see para 45 post. Section 23 has now been amended so as to take into account the effect of the renaming of British dependent territories citizenship as British overseas territories citizenship.

18 British Nationality (Falkland Islands) Act 1983 s 1(1). Those who satisfy the conditions in head (b) or head (c) in the text are British citizens by descent, unless they also qualify under some other provision making them British citizens otherwise than by descent: see s 3; and para 40 post.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/25. Automatic acquisition on 21 May 2002.

25. Automatic acquisition on 21 May 2002.

In general, any person who was a British overseas territories citizen¹ immediately before 21 May 2002² became a British citizen on that date³. This does not apply, however, to a person who is a British overseas territories citizen by virtue only of a connection with the Sovereign Base Areas of Akrotiri and Dhekelia⁴.

A person who:

- 37 (1) was born on or after 26 April 1969 and before 1 January 1983⁵;
- 38 (2) was born to a woman who at the time was a citizen of the United Kingdom and colonies⁶ by virtue of her birth in the British Indian Ocean Territory⁷;
- 39 (3) immediately before 21 May 2002⁸, was neither a British citizen nor a British overseas territories citizen⁹,

became a British citizen on 21 May 2002¹⁰.

1 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 ante, 44-57 post.

2 Ie the date of the commencement of the British Overseas Territories Act 2002 s 3: see s 8; and the British Overseas Territories Act 2002 (Commencement) Order 2002, SI 2002/1252, art 2(a).

3 British Overseas Territories Act 2002 s 3(1). A person who is a British citizen by virtue of s 3 is a British citizen by descent for the purposes of the British Nationality Act 1981 if, and only if: (1) he was a British overseas territories citizen by descent immediately before 21 May 2002; and (2) where at that time he was a British citizen as well as a British overseas territories citizen, he was a British citizen by descent: British Overseas Territories Act 2002 s 3(3). As to citizenship by descent see para 40 post.

4 Ibid s 3(2).

5 Ibid s 6(1)(a).

6 As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

7 British Overseas Territories Act 2002 s 6(1)(b).

8 I.e. the date of the commencement of *ibid* s 6: see s 8; and the British Overseas Territories Act 2002 (Commencement) Order 2002, SI 2002/1252, art 2(b).

9 British Overseas Territories Act 2002 s 6(1)(c).

10 *Ibid* s 6(1). A person who is a British citizen by virtue of s 6(1) is a British citizen by descent for the purposes of the British Nationality Act 1981: British Overseas Territories Act 2002 s 6(2).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/26. Acquisition by birth, adoption, etc.

26. Acquisition by birth, adoption, etc.

A person born in the United Kingdom¹ on or after 1 January 1983² or in a qualifying territory³ on or after 21 May 2002⁴ is a British citizen if⁵ at the time of the birth⁶ his father or mother⁷ is a British citizen⁸, or settled in the United Kingdom or that territory⁹. There is a rebuttable presumption that a new-born infant who is found abandoned in the United Kingdom or who is found on or after 21 May 2002 in a qualifying territory fulfils these qualifications¹⁰.

Where on or after 1 January 1983 an order authorising the adoption of a minor is made by any court in the United Kingdom, or where on or after 21 May 2002 such an order is made by any court in a qualifying territory, that minor is a British citizen as from the date of the order, provided that the adopter (or, in the case of a joint adoption, one of the adopters) is a British citizen on that date¹¹; he remains a British citizen even if the order ceases to have effect¹².

A person born outside the United Kingdom on or after 1 January 1983 and before 21 May 2002 is a British citizen if at the time of the birth his father or mother¹³ is a British citizen: (1) otherwise than by descent¹⁴; or (2) serving outside the United Kingdom, as a result of recruitment inside the United Kingdom, in Crown service under the government of the United Kingdom or service designated¹⁵ by the Secretary of State¹⁶ as closely associated with the activities outside the United Kingdom of Her Majesty's government in the United Kingdom¹⁷; or (3) serving outside the United Kingdom in service under a European Community institution, as a result of recruitment within a country which at the time of the recruitment was a member of the European Communities¹⁸. In relation to persons born on or after 21 May 2002, these provisions apply to those born outside the United Kingdom and the qualifying territories¹⁹. Such a person is a British citizen if at the time of the birth his father or mother²⁰ is a British citizen: (a) otherwise than by descent²¹; or (b) serving outside the United Kingdom and the qualifying territories, as a result of recruitment inside the United Kingdom or the qualifying territories, in Crown service under the government of the United Kingdom or of a qualifying territory or service designated²² by the Secretary of State as closely associated with the activities outside the United Kingdom and the qualifying territories of Her Majesty's government in the United Kingdom or in a qualifying territory²³; or (c) serving outside the United Kingdom and the qualifying territories in service under a European Community institution, as a result of recruitment within a country which at the time of the recruitment was a member of the European Communities²⁴.

A person born in a British overseas territory on or after 1 January 1983 who would otherwise be born stateless is a British citizen if at the time of his birth his father or mother is a British citizen²⁵.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

A person born outside the United Kingdom aboard a ship or aircraft is deemed to have been born in the United Kingdom if at the time of the birth the ship or aircraft was registered in the United Kingdom or was an unregistered ship or aircraft of the government of the United Kingdom and: (1) at the time of the birth his father or mother was a British citizen (see note 6 infra); or (2) he would otherwise have been born stateless: see the British Nationality Act 1981 s 50(7)(a). Subject to s 50(7)(a), a person born outside the United Kingdom aboard a ship or aircraft is to be regarded as born outside the United Kingdom, whoever was the owner of the ship or aircraft at the time, and irrespective of whether or where it was then registered: s 50(7)(b). 'Ship' includes a hovercraft: s 50(1).

For the purposes of the British Nationality Act 1981, a person born outside a qualifying territory (see note 3 infra) aboard a ship or aircraft is deemed to have been born in such a territory if at the time of the birth the ship or aircraft was registered in that territory or was an unregistered ship or aircraft of the government of that territory and: (a) at the time of the birth his father or mother was a British citizen or a British overseas territories citizen; or (b) he would otherwise have been born stateless: s 50(7A)(a) (s 50(7A) added by the British Overseas Territories Act 2002 s 5, Sch 1 para 5). Subject to the British Nationality Act 1981 s 50(7A)(a) (as added), a person born outside a qualifying territory aboard a ship or aircraft is to be regarded as born outside such a territory, whoever was the owner of the ship or aircraft at the time, and irrespective of whether or where it was then registered: s 50(7A)(b) (as so added). As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 ante, 44-57 post.

For the purposes of the British Nationality Act 1981, a person born outside a British overseas territory, other than a qualifying territory, aboard a ship or aircraft is deemed to have been born in such a territory if at the time of the birth the ship or aircraft was registered in that territory or was an unregistered ship or aircraft of the government of that territory and: (i) at the time of the birth his father or mother was a British overseas territories citizen; or (ii) he would otherwise have been born stateless: s 50(7B)(a) (s 50(7B) added by the British Overseas Territories Act 2002 Sch 1 para 5). Subject to the British Nationality Act 1981 s 50(7B)(a) (as added), a person born outside a British overseas territory, other than a qualifying territory, aboard a ship or aircraft is to be regarded as born outside such a territory, whoever was the owner of the ship or aircraft at the time, and irrespective of whether or where it was then registered: s 50(7B)(b) (as so added). As to British overseas territories (formerly known as dependent territories) see para 44 note 1 post.

2 Ie the date on which the British Nationality Act 1981 came into force: see para 5 note 1 ante.

3 'Qualifying territory' means a British overseas territory other than the Sovereign Base Areas of Akrotiri and Dhekelia: ibid s 50(1) (definition added by the British Overseas Territories Act 2002 Sch 1 para 5).

4 Ie the date on which the provisions of the British Overseas Territories Act 2002 Sch 1 (which contains provisions amending the British Nationality Act 1981) came into force: see the British Overseas Territories Act 2002 s 8; and the British Overseas Territories Act 2002 (Commencement) Order 2002, SI 2002/1252, art 2(a).

5 This qualification was a major change of policy. Previously every person born in the United Kingdom acquired British nationality unless, by reason of diplomatic immunity or of birth to an enemy alien father in a place then occupied by the enemy (see para 19 head (1) ante), he was not born within allegiance to the Crown.

6 In relation to a person born after the death of his father or mother, any reference in the British Nationality Act 1981 to the status or description of the father or mother of a person at the time of that person's birth is to be construed as a reference to the status or description of the parent in question at the time of that parent's death; and where that death occurred before, and the birth occurs after, the commencement of the British Nationality Act 1981 (ie 1 January 1983: see para 5 note 1 ante), the status or description which would have been applicable to the father or mother had he or she died after that date is deemed to be the status or description applicable to him or her at the time of his or her death: s 48.

7 For the purposes of the British Nationality Act 1981, the relationship of mother and child is taken to exist between a woman and any child (legitimate or illegitimate) born to her, but (subject to s 47) the relationship of father and child is taken to exist only between a man and any legitimate child born to him; and the expressions 'mother', 'father', 'parent', 'child' and 'descended' are to be construed accordingly: s 50(9). A person born out of wedlock and legitimated by the subsequent marriage of his parents is to be treated for the purposes of the British Nationality Act 1981, as from the date of the marriage, as if he had been born legitimate: s 47(1). A person is deemed for the purposes of s 47 to have been legitimated by the subsequent marriage of his parents if by the law of the place in which his father was domiciled at the time of the marriage the marriage operated immediately or subsequently to legitimate him, and not otherwise: s 47(2).

Although s 44(1) (see para 2 ante) prohibits discrimination on grounds of race, colour or religion, s 50(9) expressly discriminates against illegitimate children. The Family Law Reform Act 1987 made general provision for the abolition of discrimination against illegitimate children, but the British Nationality Act 1981 s 50(9) has not been repealed. In *R (on the application of Montana) v Secretary of State for the Home Department* [2001] 1

FCR 358, [2001] 1 WLR 552, CA, a refusal to register an illegitimate child as a British citizen under the British Nationality Act 1981 s 3(1) (see para 28 post) was held not to be a breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8, or of art 8 taken together with art 14. The facts of that case are unlikely to arise again as Home Office policy is now to register children under the British Nationality Act 1981 s 3(1) where but for their illegitimacy they would be British citizens.

8 Ibid s 1(1)(a) (s 1(1) amended by the British Overseas Territories Act 2002 Sch 1 para 1).

9 British Nationality Act 1981 s 1(1)(b) (as amended: see note 8 supra). A person is settled in the United Kingdom or in a British overseas territory if he is ordinarily resident there without being subject under the immigration laws to any restriction on the period for which he may remain: s 50(2) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). However, a person is not to be regarded: (1) as having been settled in the United Kingdom if he is entitled to an exemption under the Immigration Act 1971 s 8(2) (as amended) (exemption orders: see para 88 et seq post) (unless the exemption order provides otherwise), s 8(3) (as amended) (members of diplomatic missions and their families: see para 88 post) or s 8(4)(b) (as amended) or s 8(4)(c) (foreign servicemen: see para 89 post), or to any corresponding exemption under former immigration laws (British Nationality Act 1981 s 50(3)(a)); or (2) as having been settled in a British overseas territory at any time when he was under the immigration laws entitled to any exemption corresponding to any such exemption as is mentioned in head (1) supra (s 50(3)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b))). See *R v Secretary of State for the Home Department, ex p Chaumun* [1999] INLR 479.

For the purposes of the British Nationality Act 1981 s 1(1) (as amended), a person to whom a child is born in the United Kingdom on or after 1 January 1983 is to be regarded as being settled in the United Kingdom at the time of the birth if: (a) he would fall to be so regarded but for being at that time entitled to an exemption under the Immigration Act 1971 s 8(3) (as amended) (see para 88 post) or by virtue of the Immigration (Exemption from Control) Order 1972, SI 1972/1613 (as amended) (see paras 88, 90-91, 162 post); and (b) immediately before he became entitled to that exemption he was settled in the United Kingdom; and (c) he was ordinarily resident in the United Kingdom from the time when he became entitled to the exemption to the time of the birth, unless at the time of the birth either parent is a person entitled to immunity from jurisdiction under the Diplomatic Privileges Act 1964 (see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 265 et seq): see the British Nationality Act 1981 s 50(4); and the Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 6 (added by SI 1982/1649). A person is not to be treated as ordinarily resident in the United Kingdom or in a British overseas territory at a time when he is there in breach of the immigration laws: British Nationality Act 1981 s 50(5) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). See also paras 22 notes 15, 16 ante, 134 post.

'Immigration laws' means, in relation to the United Kingdom, the Immigration Act 1971 and any law for purposes similar to that Act which is for the time being or has at any time been in force in any part of the United Kingdom and, in relation to a British overseas territory, any law for purposes similar to the Immigration Act 1971 which is for the time being or has at any time been in force in that territory: British Nationality Act 1981 s 50(1) (definition amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)).

10 See the British Nationality Act 1981 s 1(2) (amended by the British Overseas Territories Act 2002 Sch 1 para 1).

11 British Nationality Act 1981 s 1(5) (amended by the British Overseas Territories Act 2002 Sch 1 para 1). 'Minor' means a person who has not attained the age of 18 years: British Nationality Act 1981 s 50(1).

As from a day to be appointed, s 1(5) is substituted so as to provide that where:

32 (1) any court in the United Kingdom or, on or after the appointed day, any court in a qualifying territory makes an order authorising the adoption of a minor who is not a British citizen; or

33 (2) a minor who is not a British citizen is adopted under a Convention adoption,

then, if the following requirements are met, that minor is a British citizen as from the date on which the order is made or the Convention adoption is effected, as the case may be: s 1(5) (prospectively substituted by the Adoption (Intercountry Aspects) Act 1999 s 7(1); and amended by the British Overseas Territories Act 2002 Sch 1 para 1). The requirements are that on the date on which the order is made or the Convention adoption is effected (as the case may be): (a) the adopter or, in the case of a joint adoption, one of the adopters is a British citizen; and (b) in a case within head (2) supra, the adopter or, in the case of a joint adoption, both of the adopters are habitually resident in the United Kingdom: British Nationality Act 1981 s 1(5A) (prospectively added by the Adoption (Intercountry Aspects) Act 1999 s 7(1)). At the date at which this volume states the law no such day had been appointed. For these purposes, 'Convention adoption' has the same meaning as in the Adoption Act 1976 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) para 375): British Nationality Act 1981 s 1(8) (definition prospectively added by the Adoption (Intercountry Aspects) Act 1999 s 7(3)). As to intercountry adoptions see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) para 483 et seq.

As to the bearing of the acquisition of citizenship carrying with it the right of abode on the decision whether to make an adoption order see *Re H* [1982] Fam 121, [1982] 3 All ER 84; *Re W* [1986] Fam 54, [1985] 3 All ER 449, CA; *Re B* [1999] 2 AC 136. Note that whereas under previous law the right of abode (though not citizenship of the United Kingdom and colonies: see paras 16-22 ante) could be acquired by an overseas adoption as well as by a domestic adoption (see para 22 note 11 ante), that right can now only be acquired by acquisition of British citizenship.

12 See the British Nationality Act 1981 s 1(6). See *Re K (A Minor) (Adoption: Nationality)* [1995] Fam 38, [1994] 3 All ER 553, CA, where it was held that the wording of the British Nationality Act 1981 s 1(6) did not affect the right of the Secretary of State to appeal against an adoption order (which would confer British nationality) made eight days' short of the child's majority in respect of a child with no right of abode in United Kingdom.

As from a day to be appointed, the British Nationality Act 1981 s 1(6) is amended so as to provide also that where a Convention adoption in consequence of which any person became a British citizen (see note 11 supra) ceases to have effect, whether on annulment or otherwise, the cesser is not to affect the status of that person as a British citizen: see s 1(6) (prospectively amended by the Adoption (Intercountry Aspects) Act 1999 s 7(2)). At the date at which this volume states the law no such day had been appointed.

13 British Nationality Act 1981 s 2(1).

14 See *ibid* s 2(1)(a). For the purposes of the British Nationality Act 1981, a person who is a British citizen by virtue of s 2(1)(a) is a British citizen by descent: see s 14(1)(a); and para 40 post. See also the British Nationality (Falkland Islands) Act 1983 s 3; the British Nationality (Hong Kong) Act 1990 s 2(1); and paras 31-32 post. For circumstances in which a person inherits British citizenship from a parent who has it by descent see further the British Nationality Act 1981 Sch 2 para 2 (as amended); and the text and note 25 infra. Acquisition of British citizenship from a father is subject to legitimacy (see note 7 supra): see eg *Azad v Entry Clearance Officer Dhaka* [2001] Imm AR 318, CA.

15 Is designated by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. As to the order that has been made see the British Citizenship (Designated Service) Order 1982, SI 1982/1004 (amended by SI 1982/1709; SI 1984/1766; SI 1987/611; SI 1990/28; SI 1994/556; SI 1995/552).

16 As to the Secretary of State see para 2 ante.

17 See the British Nationality Act 1981 s 2(1)(b), (2)-(4). For the purposes of the British Nationality Act 1981, a person who is a British citizen by virtue of s 2(1)(b) is not a British citizen by descent: see s 14(1) (as amended); and para 40 post. A certificate given by or on behalf of the Secretary of State that a person was at any time in Crown service under the government of the United Kingdom or that a person's recruitment for such service took place in the United Kingdom is conclusive evidence of that fact: see s 45(4); and para 80 post.

18 See *ibid* s 2(1)(c). For the purposes of the British Nationality Act 1981, a person who is a British citizen by virtue of s 2(1)(c) is not a British citizen by descent: see s 14(1) (as amended); and para 40 post.

19 *Ibid* s 2(1) (s 2(1), (2), (3) amended by the British Overseas Territories Act 2002 Sch 1 para 2).

20 British Nationality Act 1981 s 2(1) (as amended: see note 19 supra).

21 See *ibid* s 2(1)(a). See also note 14 supra.

22 See note 15 supra.

23 See the British Nationality Act 1981 s 2(1)(b), (2)-(4) (s 2(1)(b), (2), (3) as amended: see note 19 supra). See also note 17 supra.

24 See *ibid* s 2(1)(c) (as amended: see note 19 supra). See also note 18 supra.

25 See *ibid* s 36, Sch 2 para 2 (Sch 2 para 2 amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). For the purposes of the British Nationality Act 1981, a person who is a British citizen by virtue of Sch 2 para 2 (as amended) is a British citizen by descent: see s 14(1)(h) (as amended); and para 40 post. This provision only applies where the parent is a British citizen by descent; otherwise the child would be a British citizen by descent anyway: see the text and note 14 supra.

UPDATE

26 Acquisition by birth, adoption, etc

NOTE 7--1981 Act s 50(9) replaced by s 50(9)-(9C) (substituted by the Nationality, Immigration and Asylum Act 2002 s 9(1); 1981 Act s 50(9A) amended by Human Fertilisation and Embryology Act 2008 Sch 6 para 22). For the purposes of the 1981 Act, in relation to a child born on or after 1 July 2006 (see 2002 Act s 162(5)), (1) a child's mother is the woman who gives birth to the child (s 50(9) (as so substituted)); (2) a child's father is (a) the husband, at the time of the child's birth, of the woman who gives birth to the child, or (b) (b) where a person is treated as the father of the child under the Human Fertilisation and Embryology Act 1990 s 28 or the Human Fertilisation and Embryology Act 2008 s 35 or 36, that person, or (c) where a person is treated as a parent of the child under the Human Fertilisation and Embryology Act 2008 s 42 or 43, that person, or (d) where none of heads (a)-(c) applies, a person who satisfies prescribed requirements as to proof of paternity (1981 Act s 50(9A) (as so substituted and amended)). The expressions 'parent', 'child' and 'descended' are to be construed in accordance with s 50(9), (9A): s 50(9C) (as so substituted). For the purposes of head (2)(c), (i) the person must be named as the father of the child in a birth certificate issued within one year of the date of the child's birth, or (ii) the person must satisfy the Secretary of State that he is the father of the child: British Nationality (Proof of Paternity) Regulations 2006, SI 2006/1496, reg 2. The Secretary of State may determine whether a person is the father of a child for the purpose of head (ii), and for this purpose the Secretary of State may have regard to any evidence which he considers to be relevant, including, but not limited to, DNA test reports and court orders: reg 3.

1981 Act s 47 repealed: 2002 Act s 9(4), Sch 9.

TEXT AND NOTE 9--For the purposes of the 1981 Act s 50(5) (and for the purposes of s 4(2), (4) (see PARA 29) and Sch 1 (see PARA 37)) a person is in the United Kingdom in breach of the immigration laws if, and only if, he (1) is in the United Kingdom; (2) does not have the right of abode in the United Kingdom within the meaning of Immigration Act 1971 s 2 (see PARA 14); (3) does not have leave to enter or remain in the United Kingdom (whether or not he previously had leave); (4) does not have a qualifying CTA entitlement; (5) is not entitled to reside in the United Kingdom by virtue of any provision made under European Communities Act 1972 s 2(2) (whether or not he was previously entitled); (6) is not entitled to enter and remain in the United Kingdom by virtue of Immigration Act 1971 s 8(1) (see PARA 87) (whether or not he was previously entitled); and (7) does not have the benefit of an exemption under the 1971 Act s 8(2)-(4) (see PARA 88 et seq) (whether or not he previously had the benefit of an exemption): British Nationality Act 1981 s 50A(1), (4) (s 50A added by Borders, Citizenship and Immigration Act 2009 s 48(1) to replace corresponding provision in Nationality, Immigration and Asylum Act 2002 s 11). For the purposes of head (4), a person has a qualifying CTA entitlement if he (a) is a citizen of the Republic of Ireland; (b) last arrived in the United Kingdom on a local journey (within the meaning of the Immigration Act 1971) from the Republic of Ireland; and (c) on that arrival, was a citizen of the Republic of Ireland and was entitled to enter without leave by virtue of Immigration Act 1971 s 1(3): British Nationality Act 1981 s 50A(5). The 1971 Act s 11(1) (see PARA 93) applies for the purposes of the 1981 Act s 50A as it applies for the purposes of the 1971 Act: British Nationality Act 1981 s 50A(6). Section 50A is without prejudice to the generality of a reference to being in a place outside the United Kingdom in breach of immigration laws, and a reference in a provision other than one specified in s 50A(1) to being in the United Kingdom in breach of immigration laws: British Nationality Act 1981 s 50A(7). Transitional provision is made for persons born, and specified applications made, before 13 January 2010: see British Nationality Act 1981 s 50A(2), (3), (8); Borders, Citizenship and Immigration Act 2009 s 48(2)-(5).

A person born in the United Kingdom or a qualifying territory on or after 13 January 2010 (ie the day of commencement of Borders, Citizenship and Immigration Act 2009 s

42: 1981 Act s 1(9) (added by Borders, Citizenship and Immigration Act 2009 s 42(6))) is a British citizen if at the time of the birth his father or mother is a member of the armed forces: 1981 Act s 1(1A) (added by Borders, Citizenship and Immigration Act 2009 s 42(2)). For details of commencement of the 2009 Act see SI 2009/2731. A person is a member of the armed forces if he is a member of the regular forces within the meaning of Armed Forces Act 2006 or a member of the reserve forces within the meaning of the 2006 Act subject to service law by virtue of the 2006 Act s 367(2)(a), (b) or (c) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 306-313): 1981 Act s 50(1A) (s 50(1A), (1B) added by Borders, Citizenship and Immigration Act 2009 s 49(1)). However, a person is not to be regarded as a member of the armed forces if he is treated as a member of a regular or reserve force by virtue of Armed Forces Act 2006 s 369 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 306-313) or Visiting Forces (British Commonwealth) Act 1933 s 4(3) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 255): 1981 Act s 50(1B).

NOTE 11--Day now appointed for purposes of 1999 Act s 7(1), (3): SI 2003/362.

NOTE 15--SI 1982/1004 replaced: British Citizenship (Designated Service) Order 2006, SI 2006/1390 (amended by SI 2007/744, SI 2009/2054, SI 2009/2958).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/27. Acquisition by registration: birth in the United Kingdom.

27. Acquisition by registration: birth in the United Kingdom.

A person born in the United Kingdom¹ on or after 1 January 1983² who does not automatically acquire British citizenship by birth³ is entitled⁴ to be registered as a British citizen if:

- 40 (1) while he is a minor, an application for his registration as a British citizen is made on the ground that his father or mother has become a British citizen or has become settled in the United Kingdom⁵; or
- 41 (2) an application for his registration as a British citizen is made at any time after he attains the age of ten years⁶, on the ground that during each of the first ten years of his life he has not been absent from the United Kingdom for more than 90 days⁷.

1 See para 26 note 1 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Ie the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

3 Ie by virtue of the British Nationality Act 1981 s 1(1), (2) (as amended): see para 26 ante.

4 This is subject to overriding considerations of public policy, where the qualifying conditions are fulfilled by criminal activity: *R v Secretary of State for the Home Department, ex p Puttick* [1981] QB 767, [1981] 1 All ER 776, DC (married status on which entitlement depended valid but obtained by perjury and forgery).

5 See the British Nationality Act 1981 s 1(3). See para 26 note 9 ante. As to applications see para 79 post. For the meaning of 'minor' see para 26 note 11 ante.

6 For the purposes of the British Nationality Act 1981, a person attains any particular age at the beginning of the relevant anniversary of the date of his birth: s 50(11)(b).

7 See *ibid* ss 1(4), 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). If in the special circumstances of any particular case the Secretary of State thinks fit, he may waive longer periods

of absence: see the British Nationality Act 1981 s 1(7). As to the exercise of discretion see s 44; and para 2 ante.

UPDATE

27 Acquisition by registration: birth in the United Kingdom

TEXT AND NOTES 5, 7--An application for registration of an adult or young person as a British citizen under the 1981 Act s 1(3), (3A), (4) must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character: British Nationality Act 1981 s 41A(1) (s 41A(1), (5) added by Borders, Citizenship and Immigration Act 2009 s 47(1) to replace corresponding provision in Immigration, Asylum and Nationality Act 2006 s 58). 'Adult or young person' means a person who has attained the age of ten at the time when the application is made: British Nationality Act 1981 s 41A(5).

A person born in the United Kingdom on or after 13 January 2010 (ie the day of commencement of Borders, Citizenship and Immigration Act 2009 s 42: 1981 Act s 1(9) (added by Borders, Citizenship and Immigration Act 2009 s 42(6))) who is not a British citizen by virtue of the 1981 Act s 1(1), (1A) or (2) is entitled to be registered as a British citizen if, while he is a minor (1) his father or mother becomes a member of the armed forces; and (2) an application is made for his registration as a British citizen: 1981 Act s 1(3A) (added by Borders, Citizenship and Immigration Act 2009 s 42(4)). For details of commencement of the 2009 Act see SI 2009/2731. 1981 Act s 1(3), (4) amended by Borders, Citizenship and Immigration Act 2009 s 42(3), (5) so as to additionally refer to the automatic acquisition of British citizenship under 1981 Act s 1(1A) (PARA 26). For the meaning of 'member of the armed forces' see PARA 26.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/28. Acquisition by registration: minors.

28. Acquisition by registration: minors.

The Secretary of State¹ may, if he thinks fit², grant any application³ for registration of a minor as a British citizen⁴.

A person born outside the United Kingdom⁵ before 21 May 2002⁶ is entitled⁷, on an application made within 12 months⁸ from his birth, to be registered as a British citizen if: (1) one of his parents was a British citizen by descent⁹ at the time of the birth¹⁰; and (2) the father or mother of that parent was a British citizen otherwise than by descent at the time of the birth of that parent, or became a British citizen otherwise than by descent on 1 January 1983¹¹ or would have done so but for his or her death; and (3) (save in the case of a person born stateless¹²) that parent had been in the United Kingdom at the beginning of any three year period ending not later than the date of the birth and had not been absent from the United Kingdom for more than 270 days during that period¹³. In relation to persons born on or after 21 May 2002, these provisions apply to those born outside the United Kingdom and the qualifying territories¹⁴, and head (3) above requires presence in the United Kingdom or a qualifying territory¹⁵.

A person born outside the United Kingdom before 21 May 2002 is entitled¹⁶, on an application made while he is a minor, to be registered as a British citizen if: (a) at the time of that person's birth his father or mother was a British citizen by descent; and (b) that person and his father and mother were in the United Kingdom at the beginning of the period of three years ending with the date of the application and none of them has been absent from the United Kingdom

for more than 270 days during that period; and (c) his father and mother consent to the registration in the prescribed manner¹⁷. In relation to persons born on or after 21 May 2002, these provisions apply to those born outside the United Kingdom and the qualifying territories, and head (b) above requires presence in the United Kingdom or a qualifying territory¹⁸.

1 As to the Secretary of State see para 2 ante.

2 As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante.

3 As to applications see para 79 post.

4 See the British Nationality Act 1981 s 3(1). See also *R (on the application of Montana) v Secretary of State for the Home Department* [2001] 1 FCR 358, [2001] 1 WLR 552, CA (where a refusal of an application made by a British father under the British Nationality Act 1981 s 3(1) for registration of an illegitimate child born abroad was held not to be in breach of human rights); and para 26 note 7 ante. For the meaning of 'minor' see para 26 note 11 ante.

Provided that the application is made during minority, the Secretary of State may determine it, and effect registration, after the age of majority has been reached, although an oath of allegiance may then be necessary: *Gowa v A-G* [1985] 1 WLR 1003, HL. As to oaths of allegiance see para 79 post.

A person registered under the British Nationality Act 1981 s 3(1) is a British citizen by descent if at the time of his birth his father or mother was a British citizen, or was at that time a citizen of the United Kingdom and colonies and became a British citizen on 1 January 1983 or would have done so but for his or her death: see s 14(1)(c); and para 40 post. As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

5 See para 26 note 1 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

6 Ie the date on which the provisions of the British Overseas Territories Act 2002 Sch 1 (which contains provisions amending the British Nationality Act 1981) came into force: see the British Overseas Territories Act 2002 s 8; and the British Overseas Territories Act 2002 (Commencement) Order 2002, SI 2002/1252, art 2(a).

7 See para 27 note 4 ante.

8 If in the special circumstances of any particular case he thinks fit, the Secretary of State may treat this reference to 12 months as a reference to 6 years: British Nationality Act 1981 s 3(4).

9 As to British citizenship by descent see para 40 post.

10 See para 26 notes 6, 7 ante.

11 Ie the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

12 A person born stateless need only satisfy heads (1) and (2) in the text. As to registration of stateless persons see also para 35 post.

13 See the British Nationality Act 1981 ss 3(2), (3), 50(10)(b). A person registered under s 3(2) is a British citizen by descent: see s 14(1)(a); and para 40 post.

14 For the meaning of 'qualifying territory' see para 26 note 3 ante.

15 See the British Nationality Act 1981 s 3(2), (3) (amended by the British Overseas Territories Act 2002 Sch 1 para 3); and the British Nationality Act 1981 s 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). See also note 13 supra.

16 See note 7 supra.

17 See the British Nationality Act 1981 ss 3(5), 50(10)(b). As to the manner of signifying parental consent to registration see the British Nationality (General) Regulations 1982, SI 1982/986, reg 15. As to the power to make regulations see para 6 ante.

If the person's father or mother died, or their marriage was terminated, on or before the date of the application, or his father and mother were legally separated on that date, the references to his father and mother in head (b) in the text are to be read either as references to his father or as references to his mother; if his father or mother died on or before that date, the reference to his father and mother in head (c) in the text is to be read as a reference to either of them; and if he was born illegitimate, all those references are to be read as references to his mother: British Nationality Act 1981 s 3(6).

A person registered under s 3(5) is not a British citizen by descent: see s 14; and para 40 post.

18 See *ibid* s 3(5) (amended by the British Overseas Territories Act 2002 Sch 1 para 3); and the British Nationality Act 1981 s 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). See also note 17 *supra*.

UPDATE

28 Acquisition by registration: minors

TEXT AND NOTES 4, 15, 17, 18--An application for registration of an adult or young person as a British citizen under the 1981 Act s 3(1), (2), (5) must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character: British Nationality Act 1981 s 41A(1) (s 41A(1), (5) added by Borders, Citizenship and Immigration Act 2009 s 47(1) to replace corresponding provision in Immigration, Asylum and Nationality Act 2006 s 58). 'Adult or young person' means a person who has attained the age of ten at the time when the application is made: British Nationality Act 1981 s 41A(5).

TEXT AND NOTES 5-13--For 'within 12 months from his birth' read 'while he is a minor': British Nationality Act 1981 s 3(2) (further amended by Borders, Citizenship and Immigration Act 2009 s 43(2)). 1981 Act s 3(4) repealed: Borders, Citizenship and Immigration Act 2009 s 43(3), Schedule.

NOTE 17--SI 1982/986 reg 15 now British Nationality (General) Regulations 2003, SI 2003/548, reg 14.

In British Nationality Act 1981 s 3(6) after 'marriage' add 'or civil partnership': Civil Partnership Act 2004 Sch 27 para 71.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/29. Acquisition by registration: holders of other types of British nationality.

29. Acquisition by registration: holders of other types of British nationality.

The holders of other types of British nationality¹ may be able to acquire British citizenship by registration. Thus a British overseas territories citizen², a British overseas citizen³, a British national (overseas)⁴, a British subject⁵ or a British protected person⁶, is entitled⁷, on application⁸, to be registered as a British citizen if he satisfies each of the following four requirements⁹: (1) he was in the United Kingdom¹⁰ at the beginning of the period of five years ending with the date of application and was not absent during that period for more than 450 days¹¹; (2) in the 12 months preceding the application he was not absent from the United Kingdom for more than 90 days¹²; (3) during the 12 months preceding the application he was not subject under the immigration laws¹³ to any restriction on the period for which he might remain in the United Kingdom¹⁴; (4) he was not at any time during the period of five years ending with the date of application in the United Kingdom in breach of the immigration laws¹⁵.

The Secretary of State may, if he thinks fit, register as a British citizen any British overseas territories citizen, British national (overseas), British overseas citizen, British subject or British protected person who has at any time served: (a) in Crown service under the government of a British overseas territory; or (b) in paid or unpaid service as a member of any body established by law in a British overseas territory members of which are appointed by or on behalf of the Crown¹⁶.

In the case of a British overseas territories citizen, the Secretary of State has a discretion to register him as a British citizen, whether or not the above requirements have been satisfied¹⁷. However, since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed automatic British citizenship¹⁸.

1 A person holding a citizenship or status mentioned in this paragraph does not necessarily have formal British nationality: see further para 7 et seq ante.

2 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 ante, 44-57 post. Note that since 21 May 2002 most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship, without the need for registration: see the text and note 18 infra.

3 As to British overseas citizens see paras 8 ante, 58-62 post.

4 As to British national (overseas) status see paras 8 ante, 63-65 post.

5 As to British subjects see paras 9 ante, 66-71 post.

6 As to British protected persons see paras 10 ante, 72-76 post.

7 See para 27 note 4 ante.

8 As to applications see para 79 post.

9 See the British Nationality Act 1981 s 4(1), (2) (s 4(1) amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b); and by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(2)).

There are similar requirements for naturalisation, but for naturalisation other conditions must also be met: see para 37 post. There is a right to be registered under the British Nationality Act 1981 s 4 (as amended) provided the requirements are fulfilled, but naturalisation is entirely discretionary. As to the additional discretion to register a British overseas territories citizen as a British citizen under s 4A (as added) see the text and note 17 infra.

10 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

11 See the British Nationality Act 1981 ss 4(2)(a), 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). A person settled in the United Kingdom on 31 December 1982 need not have been in the United Kingdom at the beginning of the five year period mentioned in s 4(2)(a): see the British Nationality Act 1981 s 4(3). The Secretary of State may, if he thinks fit, treat the person to whom the application relates as fulfilling the requirement specified in s 4(2)(a), although the number of days on which he was absent from the United Kingdom exceeds the number mentioned: see s 4(4)(a). As to the Secretary of State see para 2 ante. As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante.

12 See *ibid* ss 4(2)(b), 50(10)(b) (as amended: see note 11 *supra*). The Secretary of State may, if he thinks fit, treat the person to whom the application relates as fulfilling the requirement specified in s 4(2)(b), although the number of days on which he was absent from the United Kingdom exceeds the number mentioned: see s 4(4)(a).

13 For the meaning of 'immigration laws' see para 26 note 9 ante.

14 See the British Nationality Act 1981 s 4(2)(c). The Secretary of State may, if he thinks fit, disregard any such restriction as is mentioned in s 4(2)(c) provided the person to whom the application relates was not subject to the restriction on the date of the application: see s 4(4)(b).

15 See *ibid* s 4(2)(d). The Secretary of State may, if he thinks fit, treat the person to whom the application relates as fulfilling the requirement specified in s 4(2)(d), although he was in the United Kingdom in breach of the immigration laws in the period mentioned: see s 4(4)(c).

16 See *ibid* s 4(5), (6). As to British overseas territories (formerly known as dependent territories) see para 44 note 1 post.

17 See *ibid* s 4A(1) (s 4A added by the British Overseas Territories Act 2002 s 4). This does not apply in the case of a British overseas territories citizen who: (1) is such a citizen by virtue only of a connection with the Sovereign Base Areas of Akrotiri and Dhekelia; or (2) has ceased to be a British citizen as a result of a

declaration of renunciation: British Nationality Act 1981 s 4A(2) (as so added). As to renunciation see para 41 post.

18 See the British Overseas Territories Act 2002 s 3; and para 25 ante.

UPDATE

29 Acquisition by registration: holders of other types of British nationality

TEXT AND NOTES--A person may not be registered as a British overseas territories citizen under a provision of British Nationality Act 1981 by virtue of a connection with Hong Kong: Nationality, Immigration and Asylum Act 2002 s 14.

TEXT AND NOTES 9-17--An application for registration of an adult or young person as a British citizen under the 1981 Act ss 4(2), (5), 4A, 4C, 4D must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character: British Nationality Act 1981 s 41A(1) (s 41A(1), (5) added by Borders, Citizenship and Immigration Act 2009 s 47(1) to replace corresponding provision in Immigration, Asylum and Nationality Act 2006 s 58). 'Adult or young person' means a person who has attained the age of ten at the time when the application is made: British Nationality Act 1981 s 41A(5).

NOTE 15--For the construction of a reference to being in the United Kingdom 'in breach of the immigration laws' see British Nationality Act 1981 s 50A; and PARA 26.

NOTES 17, 18--As to acquisition by registration by certain persons without other citizenship, see the 1981 Act s 4B (added by the 2002 Act s 12 and amended by Borders, Citizenship and Immigration Act 2009 s 44); as to acquisition by registration by certain persons born before 1983, see the 1981 Act s 4C (added by the 2002 Act s 13 and amended by Borders, Citizenship and Immigration Act 2009 s 45); and as to acquisition by registration by children of members of the armed forces, see the 1981 Act s 4D (added by Borders, Citizenship and Immigration Act 2009 s 46). The Secretary of State cannot rely on public policy to deprive a person of registration as a British citizen under the 1981 Act s 4C where he has done nothing wrong and meets the necessary conditions to be registered; all that is needed under s 4C is that the conditions set out in s 4C are met: *R (on the application of Hicks) v Secretary of State for the Home Department* [2005] EWHC 2818 (Admin), [2005] All ER (D) 179 (Dec). See further TEXT AND NOTES 9-17.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/30. Acquisition by registration: Community nationals.

30. Acquisition by registration: Community nationals.

The British Nationality Act 1981 provides that a British overseas territories citizen¹ who falls to be treated as a national of the United Kingdom² for the purposes of the Community Treaties³ is entitled⁴, on application⁵, to be registered as a British citizen⁶. The only British overseas territories citizens who fulfil this description are those who acquired that citizenship from a connection with Gibraltar⁷.

However, since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed automatic British citizenship⁸.

- 1 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 ante, 44-57 post.
- 2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.
- 3 See para 7 ante.
- 4 See para 27 note 4 ante.
- 5 As to applications see para 79 post.
- 6 British Nationality Act 1981 s 5. A person registered under s 5 is a British citizen by descent: see s 14(1)(d); and para 40 post.
- 7 See para 7 ante. As to Gibraltar see **COMMONWEALTH** vol 13 (2009) PARA 859. See also note 8 infra.
- 8 See the British Overseas Territories Act 2002 s 3; and para 25 ante. Prior to this, Gibraltarians who were British overseas territories citizens and United Kingdom nationals for the purposes of European Community law had greater rights to live and work in other member states of the European Communities than they had with respect to the United Kingdom, since British overseas territories citizenship did not carry the right of abode in the United Kingdom, and a person cannot exercise Community rights of freedom of movement in the member state of which he is a national: see paras 13-14 ante, 225 et seq post.

UPDATE

30 Acquisition by registration: Community nationals

TEXT AND NOTE 6--An application for registration of an adult or young person as a British citizen under the 1981 Act s 5 must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character: British Nationality Act 1981 s 41A(1) (s 41A(1), (5) added by Borders, Citizenship and Immigration Act 2009 s 47(1) to replace corresponding provision in Immigration, Asylum and Nationality Act 2006 s 58). 'Adult or young person' means a person who has attained the age of ten at the time when the application is made: British Nationality Act 1981 s 41A(5).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/31. Acquisition by registration: Falkland Islands.

31. Acquisition by registration: Falkland Islands.

British nationality legislation contains special provisions in relation to the Falkland Islands¹, but the provision for discretionary registration as British citizens of British nationals connected with the Falkland Islands² was repealed with effect from 21 May 2002³. However, the Colony of the Falkland Islands is a British overseas territory⁴, and since 21 May 2002 most persons who were British overseas territories citizens⁵ immediately before that date have enjoyed British citizenship⁶.

1 See eg the provision made as regards automatic acquisition of British citizenship with effect from 1 January 1983; and para 24 ante.

2 Ie the British Nationality (Falkland Islands) Act 1983 s 2 (repealed). See also the British Nationality (Falkland Islands) Regulations 1983, SI 1983/479 (lapsed).

3 See the British Overseas Territories Act 2002 s 7, Sch 2; and the British Overseas Territories Act 2002 (Commencement) Order 2002, SI 2002/1252, art 2(c).

4 See the British Nationality Act 1981 s 50(1), Sch 6 (as amended); and para 44 note 1 post. As to British overseas territories (formerly known as dependent territories) see para 44 note 1 post. As to the Falkland Islands see **COMMONWEALTH** vol 13 (2009) PARA 858.

5 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 ante, 44-57 post.

6 See the British Overseas Territories Act 2002 s 3; and para 25 ante.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/32. Acquisition by registration under the Citizenship Selection Scheme: Hong Kong.

32. Acquisition by registration under the Citizenship Selection Scheme: Hong Kong.

On 1 July 1997 Hong Kong ceased to be a British overseas territory¹. Provision was made so that some of the people of Hong Kong could be registered before that date as British citizens while remaining resident in Hong Kong². The Secretary of State³ was required to register as British citizens, before 30 June 1997, up to 50,000 persons of good character recommended to him for that purpose by the Governor of Hong Kong under a scheme referred to as the Citizenship Selection Scheme⁴. Those eligible for inclusion in the scheme were persons settled in Hong Kong who were British overseas territories citizens⁵ by virtue of a connection with Hong Kong⁶, or British nationals (overseas)⁷, British overseas citizens⁸, British subjects⁹, or British protected persons¹⁰; a person was also eligible if he applied before 26 July 1990¹¹ for registration or naturalisation as a British overseas territories citizen by virtue of a connection with Hong Kong, provided that the application would have been successful in the absence of his registration under these provisions as a British citizen¹². The Secretary of State could direct the Governor to make not more than a specified proportion of his recommendations in a specified period or periods¹³. Spouses and minor children of persons registered under these provisions could also be registered as British citizens on the Governor's recommendation¹⁴.

1 See the Hong Kong Act 1985 s 1(1); the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 5; and **COMMONWEALTH** vol 13 (2009) PARA 727. As to its status as a dependent territory before 1 July 1997 see the British Nationality Act 1981 s 50(1), Sch 6 (as then in force). As to the consequences of its changed status see further paras 57, 61, 63 et seq post. As to British overseas territories (formerly known as dependent territories) see para 44 note 1 post.

2 See the British Nationality (Hong Kong) Act 1990. Most provisions of that Act came into force on 7 November 1990 (see the British Nationality (Hong Kong) Act 1990 (Commencement) Order 1990, SI 1990/2210); for the exception see note 5 infra. Provision had earlier been made for the continuation of a form of British nationality, namely, British national (overseas) status: see paras 63-65 post.

3 As to the Secretary of State see para 2 ante.

4 See the British Nationality (Hong Kong) Act 1990 ss 1(1), (2), 6(2), Sch 1 paras 1-3. The terms of the scheme were set out in an Order in Council: see Sch 1 para 1; and the British Nationality (Hong Kong) (Selection Scheme) Order 1990, SI 1990/2292 (amended by SI 1993/1789). No such order could be made unless a draft of it had been laid before and approved by a resolution of each House of Parliament: see the British Nationality (Hong Kong) Act 1990 Sch 1 para 1.

The Citizenship Selection Scheme provided for applications to be made by eligible persons in one of four classes (ie the general occupational class, the disciplined services class, the sensitive service class and the entrepreneurs class), for each of which there was a quota: see the British Nationality (Hong Kong) (Selection Scheme) Order 1990, SI 1990/2292, Schedule (amended by SI 1993/1789). Within the general occupational class and the disciplined services class, applicants were selected according to a points system: see the British Nationality (Hong Kong) (Selection Scheme) Order 1990, SI 1990/2292, Schedule (as so amended).

The Governor could make regulations with respect to the manner in which applications were to be made: see the British Nationality (Hong Kong) Act 1990 s 3(1), (2). The Governor had to appoint a committee to advise him

and could authorise public officers to exercise certain functions in respect of applications, although only the Governor could make a recommendation for registration: see s 3(3). Neither the Secretary of State nor the Governor, nor any public officer authorised under s 3(3) to carry out any function, was required to give any reason for any decision made by him in the exercise of a discretion vested in him by or under the British Nationality (Hong Kong) Act 1990, and such a decision was not subject to appeal or liable to be questioned in any court (see ss 1(5), 3(4)); but the discretion had to be exercised without regard to the race, colour or religion of any person affected by it (see the British Nationality Act 1981 s 44(1); and para 2 ante (applied by the British Nationality (Hong Kong) Act 1990 s 2(3))).

Further provision was made for the notification of decisions and for the taking of oaths of allegiance: see the British Nationality (Hong Kong) (Registration of Citizens) Regulations 1990, SI 1990/2211 (amended by virtue of the British Overseas Territories Act 2002 s 1(2)). As to the taking of oaths of allegiance generally see para 79 post.

A person registered as a British citizen by virtue of the British Nationality (Hong Kong) Act 1990 s 1(1) became a British citizen otherwise than by descent: see s 2(1).

5 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 ante, 44-57 post. The British Nationality (Hong Kong) Act 1990 s 2(2), which has not been brought into force, provided for a person to lose his British overseas territories citizenship if he became a British citizen under the Act.

6 References in the British Nationality (Hong Kong) Act 1990 Sch 1 para 4 to a connection with Hong Kong are to be construed in accordance with the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 2: British Nationality (Hong Kong) Act 1990 Sch 1 para 4(3). The Hong Kong (British Nationality) Order 1986, SI 1986/948, art 2 provides that a person is to be taken to have a connection with Hong Kong if:

- 34 (1) he, his father or his mother was born, naturalised or registered in Hong Kong or found abandoned there as a new-born infant; save that a person born in Hong Kong on or after 1 January 1983 is not to be taken to have a connection with Hong Kong by virtue of birth there unless, at the time of his birth, one of his parents was either settled in Hong Kong or was a British overseas territories citizen by virtue of his having a connection with Hong Kong (art 2(1)(a), (3)); or
- 35 (2) he, his father or his mother was adopted (whether or not in Hong Kong) and the adopter or, in the case of a joint adoption, one of the adopters was at the time of the adoption a British overseas territories citizen by virtue of his having a connection with Hong Kong (art 2(1)(b)); or
- 36 (3) he, his father or his mother was registered outside Hong Kong on an application based (wholly or partly) on any of the following: (a) residence in Hong Kong; (b) descent from a person born in Hong Kong; (c) descent from a person naturalised, registered or settled in Hong Kong (whether before or after the birth of the person registered); (d) descent from a person adopted in the circumstances specified in head (2) supra; (e) marriage to a person who was a British overseas territories citizen by virtue of having a connection with Hong Kong, or would have been but for his death or renunciation of citizenship; (f) Crown service under the government of Hong Kong; (g) where citizenship was renounced and subsequently resumed, birth, naturalisation or registration in Hong Kong (art 2(1)(c)); or
- 37 (4) at the time of his birth his father or mother was settled in Hong Kong (art 2(1)(d)); or
- 38 (5) his father or mother was born to a parent who at the time of the birth was a citizen of the United Kingdom and colonies by virtue of a connection with Hong Kong (art 2(1)(e)); or
- 39 (6) being a woman, she was married before 1 January 1983 to man who was a British overseas territories citizen by virtue of his having a connection with Hong Kong, or who would have been but for his death (art 2(1)(f)).

For the purposes of art 2(1), 'registered' means registered as a British overseas territories citizen or, before 1 January 1983, as a citizen of the United Kingdom and colonies: art 2(2). As to citizens of the United Kingdom and colonies see paras 16-21 ante. As to legitimated and posthumous children see the British Nationality Act 1981 ss 47, 48, 50(9) (see para 26 notes 6, 7 ante); applied by the Hong Kong (British Nationality) Order 1986, SI 1986/948, arts 1(4), 7(7)(c).

7 As to British national (overseas) status see paras 8 ante, 63-65 post.

8 As to British overseas citizens see paras 8 ante, 58-62 post.

9 As to British subjects see paras 9 ante, 66-71 post.

10 As to British protected persons see paras 10 ante, 72-76 post.

11 I.e. the date on which the British Nationality (Hong Kong) Act 1990 was passed.

12 Ibid Sch 1 para 4(1). Nothing in the British Nationality (Hong Kong) Act 1990 entitled a recommended person to be registered as a British citizen if the Secretary of State had reason to believe that he ceased to satisfy the requirements of Sch 1 para 4 after the recommendation was made: s 6(3).

13 See ibid s 1(3).

14 See the British Nationality (Hong Kong) Act 1990 s 1(4), Sch 2 paras 1, 2. The Governor could not make such a recommendation except in pursuance of an application made to him by or on behalf of the spouse or child in question: see Sch 2 para 2.

Where a person married after his registration as a British citizen under these provisions, he had to be settled in Hong Kong at the time of the marriage in order for his spouse to qualify: see Sch 2 para 3. References in Sch 2 to a minor child of a person registered under s 1(1) are references to a person who was his child on the date of registration and who was a minor on the date of the application under Sch 2 para 2 (see Sch 2 para 4(1)); and references to a child include a child adopted under an adoption order made in Hong Kong, and for this purpose an illegitimate child is the child of his mother but not his father (see Sch 2 para 4(2)). As to legitimated and posthumous children see the British Nationality Act 1981 ss 47, 48, 50(9) (see para 26 notes 6, 7 ante); applied by the British Nationality (Hong Kong) Act 1990 s 2(3). For these purposes, it was immaterial whether the spouse or child in question was settled in Hong Kong or had any citizenship or nationality otherwise than under the British Nationality Act 1981: British Nationality (Hong Kong) Act 1990 Sch 2 para 5.

A person registered as a British citizen by virtue of Sch 2 became a British citizen by descent: see s 2(1). As to citizenship by descent see para 40 post.

UPDATE

32 Acquisition by registration under the Citizenship Selection Scheme: Hong Kong

NOTE 4--1990 Act s 1(5) repealed: Nationality, Immigration and Asylum Act 2002 s 7(2).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/33. Acquisition by war wives and widows by registration: Hong Kong.

33. Acquisition by war wives and widows by registration: Hong Kong.

The Secretary of State¹ may, on an application made for the purpose, register as a British citizen any woman who, before 18 July 1996², was the recipient or intended recipient of a UK settlement letter³ if: (1) she has her residence, or principal residence, in Hong Kong; and (2) where she is no longer married to the man in recognition of whose service the assurance was given, she has not remarried⁴.

1 As to the Secretary of State see para 2 ante.

2 I.e. the date on which the Hong Kong (War Wives and Widows) Act 1996 was passed.

3 'UK settlement letter' means a letter written by the Secretary of State which: (1) confirmed the assurance given to the intended recipient that, in recognition of her husband's service, or her late or former husband's service, in defence of Hong Kong during the 1939-45 war, she could come to the United Kingdom for settlement at any time; and (2) was sent by the Secretary of State to the Hong Kong Immigration Department for onward transmission to the intended recipient (whether or not she in fact received it): ibid s 1(2). As to the meaning of 'United Kingdom' see para 5 note 1 ante.

4 Hong Kong (War Wives and Widows) Act 1996 s 1(1). There are very few women to whom these provisions can apply. A woman who is registered as a British citizen by virtue of the Hong Kong (War Wives and Widows) Act 1996 is a British citizen otherwise than by descent: see s 2(1).

UPDATE

33 Acquisition by war wives and widows by registration: Hong Kong

TEXT AND NOTES--The Secretary of State must also be satisfied that the woman is of good character before registering her as a British citizen: Hong Kong (War Wives and Widows) Act 1996 s 1(1) (amended by Borders, Citizenship and Immigration Act 2009 s 47(2) to replace corresponding provision in Immigration, Asylum and Nationality Act 2006 s 58).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/34. Acquisition by ethnic minorities by registration: Hong Kong.

34. Acquisition by ethnic minorities by registration: Hong Kong.

The Secretary of State¹, on an application made for the purpose, must register as a British citizen any person who is ordinarily resident in Hong Kong at the time of the application and who satisfies the requirements of head (1) or head (2) below². The requirements are that, immediately before 4 February 1997³:

- 42 (1) the person: (a) was ordinarily resident in Hong Kong; (b) was a British overseas territories citizen⁴ by virtue only of a connection with Hong Kong⁵; and (c) would have been a stateless person if he had not been such a citizen, or such a citizen and a British national (overseas)⁶; or
- 43 (2) the person: (a) was ordinarily resident in Hong Kong; (b) was a British overseas citizen⁷, a British subject⁸ or a British protected person⁹; and (c) would have been a stateless person if he had not been such a citizen, subject or person¹⁰.

However, a person who, on or after 4 February 1997, renounces or renounced, or otherwise gives up or gave up of his own volition, the status of a national or citizen of a country or territory outside the United Kingdom, cannot be registered¹¹.

1 As to the Secretary of State see para 2 ante.

2 British Nationality (Hong Kong) Act 1997 s 1(1). A person could not be registered under these provisions before 1 July 1997: see s 1(7).

The legislation provides for Hong Kong's ethnic minorities, namely those who but for holding a citizenship (other than British citizenship) or status under United Kingdom nationality law would be stateless, by giving them access to a substantive nationality (ie British citizenship). Persons who are ethnically Chinese already have a substantive nationality (under the nationality law of the People's Republic of China).

A person who is registered as a British citizen under s 1(1), and who satisfies the requirements of s 1(2) (see head (1) in the text), is treated for the purposes of the British Nationality Act 1981 as a British citizen by descent or a British citizen otherwise than by descent, depending on whether his previous status was held by descent or otherwise than by descent: see s 2(1). A person who is registered as a British citizen under s 1(1), and who satisfies the requirements of s 1(3) (see head (2) in the text) is treated for the purposes of the British Nationality Act 1981 as a British citizen by descent: see s 2(2).

3 As to the application of these provisions to a person born at any time on or after 4 February 1997, or acquiring the status referred to in heads (1)(b) and (2)(b) in the text at any time on or after that date, see s 1(4), (5).

4 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 ante, 44-57 post.

5 A person has a connection with Hong Kong for the purposes of the British Nationality (Hong Kong) Act 1997 s 1(2) if:

- 40 (1) he, his father or his mother was born, naturalised or registered in Hong Kong or found abandoned there as a new-born infant (s 1(2), Schedule para 1(1)(a));
- 41 (2) he, his father or his mother was adopted (whether or not in Hong Kong) and the adopter (or, in the case of a joint adoption, one of the adopters) was at the time of the adoption a British overseas territories citizen by virtue of a connection with Hong Kong (Schedule para 1(1)(b));
- 42 (3) he, his father or his mother ('the registered person') was registered outside Hong Kong on an application based (wholly or partly) on any of the following: (a) residence in Hong Kong; (b) descent from a person born in Hong Kong; (c) descent from a person naturalised, registered or settled in Hong Kong (whether before or after the birth of the registered person); (d) descent from a person adopted (whether or not in Hong Kong) in the circumstances specified in head (2) supra; (e) marriage to a person who is a British overseas territories citizen by virtue of a connection with Hong Kong or would, but for his death or renunciation of citizenship, have been such a citizen by virtue of such a connection; (f) Crown service under the government of Hong Kong; (g) where the registered person had previously renounced citizenship of the United Kingdom and colonies or British overseas territories citizenship, birth, naturalisation or registration in Hong Kong (Schedule para 1(1)(c));
- 43 (4) at the time of his birth his father or mother was settled in Hong Kong (Schedule para 1(1)(d));
- 44 (5) his father or mother was born to a parent who at the time of the birth was a citizen of the United Kingdom and colonies by virtue of a connection with Hong Kong (Schedule para 1(1)(e)); or
- 45 (6) being a woman, she was married before 1 January 1983 to a man who was a British overseas territories citizen by virtue of a connection with Hong Kong or would, but for his death or renunciation of citizenship, be such a citizen by virtue of such a connection (Schedule para 1(1)(f)).

For the purposes of Schedule para 1(1), 'registered' means registered:

- 46 (i) as a British overseas territories citizen; or
- 47 (ii) before 1 January 1983, as a citizen of the United Kingdom and colonies,

and 'registration' is to be construed accordingly: Schedule para 1(2). As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

However, a person born in Hong Kong on or after 1 January 1983 cannot be taken to have a connection with Hong Kong under head (1) supra by virtue of his birth there unless, at the time of his birth, one of his parents was settled in Hong Kong or was a British overseas territories citizen by virtue of a connection with Hong Kong: see Schedule para 2.

6 Ibid s 1(2). As to British national (overseas) status see paras 8 ante, 63-65 post.

7 As to British overseas citizens see paras 8 ante, 58-62 post.

8 As to British subjects see paras 9 ante, 66-71 post.

9 As to British protected persons see paras 10 ante, 72-76 post.

10 British Nationality (Hong Kong) Act 1997 s 1(3).

11 Ibid s 1(6). As to the meaning of 'United Kingdom' see para 5 note 1 ante.

UPDATE

34 Acquisition by ethnic minorities by registration: Hong Kong

TEXT AND NOTES--An adult or young person must not be registered under the 1997 Act s 1(1) unless the Secretary of State is satisfied that the adult or young person is of good character: British Nationality (Hong Kong) Act 1997 s 1(5A) (s 1(5A), (5B) added by Borders, Citizenship and Immigration Act 2009 s 47(3) to replace corresponding provision in Immigration, Asylum and Nationality Act 2006 s 58). 'Adult or young person' means a person who has attained the age of ten at the time when the application for registration is made: British Nationality (Hong Kong) Act 1997 s 1(5B).

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/2. British Nationality/(3) British Citizenship/35. Acquisition by registration: statelessness.

35. Acquisition by registration: statelessness.

A person born in the United Kingdom or a British overseas territory¹ on or after 1 January 1983², who is and always has been stateless³, is entitled to be registered as a British citizen if: (1) an application for his registration is made when he is over ten and under 22 years old⁴; (2) he was in the United Kingdom or a British overseas territory at the beginning of the period of five years ending with the date of application; (3) during that period he has not been absent from both the United Kingdom and the British overseas territories for more than 450 days; and (4) during that period he has spent more days (or part days) in the United Kingdom than in the British overseas territories⁵.

A person born outside the United Kingdom and the British overseas territories on or after 1 January 1983, who is and always has been stateless, is entitled on application to registration as a British citizen if: (a) at the time of his birth his father or mother⁶ was a British citizen; (b) he himself was in the United Kingdom or a British overseas territory at the beginning of the period of three years ending with the date of application; and (c) during that period he has not been absent from both the United Kingdom and the British overseas territories for more than 270 days⁷.

Provision is made for the registration of certain stateless persons born before 1 January 1983⁸.

1 See para 26 note 1 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante. As to British overseas territories (formerly known as dependent territories) see para 44 note 1 post.

2 ie the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

3 A person born in a British overseas territory to a British citizen parent is automatically a British citizen if he would otherwise be stateless; and a person born in the United Kingdom to a British overseas territories citizen parent is automatically a British overseas territories citizen if he would otherwise be stateless: see paras 26 ante, 47 post. As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 ante, 44-57 post.

4 As to applications see para 79 post. For the purposes of the British Nationality Act 1981, a person attains any particular age at the beginning of the relevant anniversary of the date of his birth: s 50(11)(b).

5 Ibid s 36, Sch 2 para 3(1), (2)(a) (Sch 2 para 3 amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). See also the British Nationality Act 1981 s 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). If he spent more days or part days in the British overseas territories than in the United Kingdom he will be registered as a British overseas territories citizen: see the British Nationality Act 1981 Sch 2 para 3(2)(b) (as amended); and para 50 post.

If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the person as fulfilling the requirements of head (3) in the text although the number of days on which he was absent from both the United Kingdom and the British overseas territories exceeds the number mentioned: see Sch 2 para 6 (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to the Secretary of State see para 2 ante. As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante.

6 See para 26 notes 6, 7 ante.

7 See the British Nationality Act 1981 Sch 2 para 4 (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). See also the British Nationality Act 1981 s 50(10)(b) (as amended: see note 5 supra). As to the registration of stateless persons see also paras 50, 60, 70 post. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the person as fulfilling the requirements of head (c) in the text although the number of days on which he was absent from both the United Kingdom and the British overseas territories exceeds the number mentioned: see Sch 2 para 6 (as amended: see note 5 supra).

8 See *ibid* Sch 2 para 5.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/36. Acquisition by registration: special cases.

36. Acquisition by registration: special cases.

A number of statutory provisions extended certain entitlements to registration under the previous nationality law for limited periods to enable those satisfying the conditions to register as British citizens, but the periods during which applications for such registration could be made have now expired¹. Those provisions dealt with: (1) registration of certain Commonwealth or Irish citizens who had been ordinarily resident in the United Kingdom for a minimum of five years (and in some cases Crown service, or other relevant service, was treated as ordinary residence in the United Kingdom)²; (2) registration of a woman on the basis of marriage³; (3) registration of a person born in a foreign country⁴ before 1 January 1988 whose father was (or but for his death would have been) a British citizen by descent⁵.

1 See the British Nationality Act 1981 ss 7-9. For analogous provisions relating to British overseas territories citizenship see para 51 post. Broadly, those who satisfied the conditions in a manner connected with the United Kingdom were able to register as British citizens, while those who satisfied the conditions in a manner connected with a British overseas territory were able to register as British overseas territories citizens. As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 ante, 44-57 post; and as to British overseas territories (formerly known as dependent territories) see para 44 note 1 post. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 See *ibid* s 7.

3 See *ibid* s 8. Some persons so registered are British citizens by descent: see s 14(1)(e); and para 40 post.

4 For the meaning of 'foreign country' see para 6 note 15 ante.

5 See the British Nationality Act 1981 s 9. This right to British citizenship by registration is restricted to persons born within five years of the commencement of the British Nationality Act 1981 (ie from 1 January 1983: see para 5 note 1 ante): see s 9(1). As to the requirements see s 9(2).

A person registered by virtue of s 9 is a British citizen by descent: see s 14(1)(a); and para 40 post.

UPDATE

36 Acquisition by registration: special cases

TEXT AND NOTES--1981 Act ss 7-9 repealed: Nationality, Immigration and Asylum Act 2002 s 15, Sch 2 para 1, Sch 9.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/37. Acquisition by naturalisation: general.

37. Acquisition by naturalisation: general.

Prior to 1983, naturalisation was the method by which aliens and British protected persons, and no others, acquired citizenship¹; and those who had the status of British subject or Commonwealth citizen acquired citizenship by registration². Since the expiry of the periods during which previous registration provisions were extended in special cases³, Commonwealth citizens who do not hold another form of British nationality⁴ now normally have to apply for naturalisation in order to acquire citizenship. British citizenship and British overseas territories citizenship⁵ are the only forms of British nationality which can be acquired by naturalisation⁶.

In order to be eligible for naturalisation as a British citizen a person must fulfil prescribed requirements⁷ but, even when these requirements are fulfilled, the grant of a certificate of naturalisation is at the discretion of the Secretary of State⁸. The requirements for naturalisation are different in some respects for an applicant who is married to a British citizen⁹, or who is in Crown service overseas or married to a British citizen in such service¹⁰. The standard requirements of general application are that:

- 44 (1) the applicant is of full age and capacity¹¹, and is of good character¹²;
- 45 (2) the applicant was in the United Kingdom¹³ at the beginning of the period of five years ending with the date of the application¹⁴;
- 46 (3) the applicant was not absent from the United Kingdom for more than 450 days during that five year period¹⁵;
- 47 (4) the applicant was not absent from the United Kingdom for more than 90 days during the 12 months preceding the application¹⁶;
- 48 (5) the applicant was not at any time during the 12 months preceding the application subject under the immigration laws¹⁷ to any restriction on the period for which he might remain in the United Kingdom¹⁸;
- 49 (6) the applicant was not, at any time in the period of five years preceding the application, in the United Kingdom in breach of the immigration laws¹⁹;
- 50 (7) the applicant has a sufficient knowledge of the English, Welsh or Scottish Gaelic language²⁰;
- 51 (8) the applicant intends, if granted naturalisation as a British citizen, either to make his home or principal home in the United Kingdom, or to enter or continue in Crown service under the government of the United Kingdom, or service under an international organisation of which the United Kingdom or its government is a member, or service in the employment of a company or association established in the United Kingdom²¹.

For the purposes of the residence requirements, a person is to be treated as having been absent from the United Kingdom during any of the following periods, even though he is physically present there²²:

- 52 (a) any period when he was entitled, or was part of the family and household of a person entitled, to exemption from immigration control by reason of diplomatic immunity²³ or as a member of the forces²⁴;

- 53 (b) any period when he was: (i) detained in pursuance of a sentence passed on him by a court in the United Kingdom or elsewhere for any offence²⁵, or under a hospital order²⁶ made in connection with his conviction of an offence²⁷, or under any power of detention conferred by the immigration laws²⁸; or (ii) unlawfully at large or absent without leave from any such detention²⁹ and in consequence liable to be arrested or taken into custody³⁰.

1 See the British Nationality Act 1948 s 10 (repealed). Before 1 January 1949 British protected persons were aliens. As to British protected persons see paras 10 ante, 72-76 post. As to aliens see para 13 ante.

2 As to British subjects see para 9 ante; and as to Commonwealth citizens see para 11 ante.

3 See the British Nationality Act 1981 ss 7-9; and para 36 ante.

4 As to the acquisition of British citizenship by holders of other types of British nationality see para 29 ante.

5 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 ante, 44-57 post.

6 A British citizen by descent cannot naturalise so as to become a British citizen otherwise than by descent: see *R (on the application of Ullah) v Secretary of State for the Home Department* [2001] EWCA Civ 659, [2002] QB 525. As to citizenship by descent see paras 40, 55 post.

7 See the British Nationality Act 1981 s 6, Sch 1 (as amended); and the text and notes 9-30 infra. Where a fact leading to naturalisation is subsequently found to be incorrect, this does not automatically nullify the naturalisation: *R v Secretary of State for the Home Department, ex p Ejaz* [1994] QB 496, [1994] 2 All ER 436, CA. It seems that the Secretary of State is entitled on grounds of public policy to decline to accept that a condition is satisfied where this has been achieved by means of criminal activity: *R v Secretary of State for the Home Department, ex p Puttick* [1981] QB 767, [1981] 1 All ER 776, DC (married status on which entitlement depended valid but obtained by perjury and forgery). As to the Secretary of State see para 2 ante. As to applications see para 79 post.

8 See the British Nationality Act 1981 s 6. As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante. It was held in *R v Secretary of State for the Home Department, ex p Fayed* [1997] 1 All ER 228, [1998] 1 WLR 763, CA, that the British Nationality Act 1981 s 44(2), which provides that there is no requirement to give reasons, does not relieve the Secretary of State of his obligation to be fair or deprive the court of its power to ensure that the needs of fairness are met (natural justice required the applicant in that case to be given notice of the Secretary of State's concerns, prior to a decision, so as to have an opportunity to answer them). In practice, reasons are now volunteered in all cases where an application for British citizenship is refused: see 303 HC Official Report (6th series), 22 December 1997, written answers col 564. See further para 2 ante. For an insight into the exercise of the naturalisation discretion see *Review of the Circumstances Surrounding an Application for Naturalisation by Mr S P Hinduja in 1998* (HC Paper (2000-01) no 287).

9 See para 38 post.

10 See para 39 post.

11 A person is of full age if he has attained the age of 18 years, and is of full capacity if he is not of unsound mind: British Nationality Act 1981 s 50(11).

12 See *ibid* s 6(1), Sch 1 para 1(1)(b). The Secretary of State is entitled to adopt a high standard in assessing whether an applicant is of good character: see *Al Fayed v Secretary of State for the Home Department* [2001] Imm AR 134, CA.

13 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

14 British Nationality Act 1981 Sch 1 para 1(1)(a), (2)(a). As to when a person is deemed to be absent from the United Kingdom see the text and notes 22-30 infra. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant as having been in the United Kingdom for the whole or any part of any period during which he would otherwise be deemed to have been absent: Sch 1 para 2(b). As to the exercise of discretion see s 44; and para 2 ante.

15 *Ibid* Sch 1 para 1(1)(a), (2)(a). See also s 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to when a person is deemed to be absent from the United Kingdom see the text and notes 22-30 infra. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant: (1) as fulfilling the requirement specified in the British Nationality Act 1981 Sch 1 para 1(2)

(a), although the number of days on which he was absent from the United Kingdom exceeds the number mentioned; (2) as having been in the United Kingdom for the whole or any part of any period during which he would otherwise be deemed to have been absent: Sch 1 para 2(a), (b).

16 Ibid Sch 1 para 1(1)(a), (2)(b). See also s 50(10)(b) (as amended: see note 15 supra). As to when a person is deemed to be absent from the United Kingdom see the text and notes 22-30 infra. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant: (1) as fulfilling the requirement specified in Sch 1 para 1(2)(b), although the number of days on which he was absent from the United Kingdom exceeds the number mentioned; (2) as having been in the United Kingdom for the whole or any part of any period during which he would otherwise be deemed to have been absent: Sch 1 para 2(a), (b).

17 For the meaning of 'immigration laws' see para 26 note 9 ante.

18 British Nationality Act 1981 Sch 1 para 1(1)(a), (2)(c). If in the special circumstances of any particular case the Secretary of State thinks fit, he may disregard any such restriction as is mentioned in Sch 1 para 1(2)(c), not being a restriction to which the applicant was subject on the date of the application: Sch 1 para 2(c). Certain EEA nationals and members of their families are not subject to any restriction on the period for which they may remain: see the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 8; and para 237 post.

19 British Nationality Act 1981 Sch 1 para 1(1)(a), (2)(d). If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant as fulfilling the requirement specified in Sch 1 para 1(2)(d) although he was in the United Kingdom in breach of the immigration laws during the period mentioned: Sch 1 para 2(d).

20 Ibid Sch 1 para 1(1)(c). If in the special circumstances of any particular case the Secretary of State thinks fit, he may waive the need to fulfil the requirement specified in Sch 1 para 1(1)(c) if he considers that because of the applicant's age or physical or mental condition it would be unreasonable to expect him to fulfil it: Sch 1 para 2(e).

21 Ibid Sch 1 para 1(1)(d). For these purposes, a company incorporated abroad but registered as an overseas company with a place of business in the United Kingdom is a company 'established' in the United Kingdom: *R v Secretary of State for the Home Department, ex p Mehta* [1992] Imm AR 512.

22 British Nationality Act 1981 Sch 1 para 9(1). This is subject to Sch 1 para 2(b): see notes 14-16 supra.

23 The exemption referred to in the text is an exemption arising under the Immigration Act 1971 s 8(3) (as amended): see para 88 post.

24 See the British Nationality Act 1981 Sch 1 para 9(1)(a). The exemption referred to in the text is an exemption arising under the Immigration Act 1971 s 8(4) (as amended): see para 89 post.

25 See the British Nationality Act 1981 Sch 1 para 9(1)(b)(i).

26 I.e a hospital order made under the Mental Health Act 1983 Pt III (ss 35-55) (as amended) or the Criminal Procedure (Scotland) Act 1975 s 175 or s 376 (as amended) or the Mental Health (Northern Ireland) Order 1986, SI 1986/595 (NI 4), Pt III (arts 42-61) (as amended). See further **MENTAL HEALTH** vol 30(2) (Reissue) para 486 et seq.

27 See the British Nationality Act 1981 Sch 1 para 9(1)(b)(ii) (amended by the Mental Health Act 1983 s 148, Sch 4 para 60; and the Mental Health (Northern Ireland Consequential Amendments) Order 1986, SI 1986/596, art 8).

28 See the British Nationality Act 1981 Sch 1 para 9(1)(b)(iii). As to powers of detention conferred by the immigration laws see paras 156, 166 post.

29 I.e when he was liable to detention as mentioned in ibid Sch 1 para 9(1)(b)(i) or Sch 1 para 9(1)(b)(ii) (as amended) (see the text and notes 25-27 supra) or when his actual detention under any such power as is mentioned in Sch 1 para 9(1)(b)(iii) (see the text and note 28 supra) was required or specifically authorised.

30 See ibid Sch 1 para 9(1)(c), (d).

UPDATE

37 Acquisition by naturalisation: general

NOTE 8--British Nationality Act 1981 s 44(2) repealed: Nationality, Immigration and Asylum Act 2002 s 7(1).

TEXT AND NOTES 11-21--Also, head (9) the applicant has sufficient knowledge about life in the United Kingdom: 1981 Act Sch 1 para 1(1)(ca) (added by the 2002 Act s 1(1)).

TEXT AND NOTE 11--Where a provision of the 1981 Act requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant's best interests: s 44A (added by the Immigration, Asylum and Nationality Act 2006 s 49).

NOTE 18--SI 2000/2326 reg 8 now Immigration (European Economic Area) Regulations 2006, SI 2006/1003, reg 15.

NOTE 19--For the construction of a reference to being in the United Kingdom 'in breach of the immigration laws' see British Nationality Act 1981 s 50A; and PARA 26.

NOTE 20--There is now a discretion to waive the need to fulfil either or both of the requirements specified in the 1981 Act Sch 1 para 1(1)(c) and (ca) (see TEXT AND NOTES 11-21) if it is unreasonable to expect the applicant to fulfil it or them: Sch 1 para 2(e) (amended by the 2002 Act s 1(2)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/38. Acquisition by naturalisation: spouses of British citizens.

38. Acquisition by naturalisation: spouses of British citizens.

An applicant who, on the date of the application¹, is married to a British citizen² is eligible for naturalisation as a British citizen, and may be granted a certificate of naturalisation by the Secretary of State³ if the following requirements are fulfilled⁴:

- 54 (1) the applicant is of full age and capacity⁵, and is of good character⁶;
- 55 (2) the applicant was in the United Kingdom⁷ at the beginning of the period of three years ending with the date of the application⁸;
- 56 (3) the applicant was not absent from the United Kingdom for more than 270 days during that three year period⁹;
- 57 (4) the applicant was not absent from the United Kingdom for more than 90 days in the 12 months preceding the application¹⁰;
- 58 (5) on the date of the application the applicant was not subject under the immigration laws¹¹ to any restriction on the period for which he might remain in the United Kingdom¹²;
- 59 (6) the applicant was not, at any time in the period of three years preceding the application, in the United Kingdom in breach of the immigration laws¹³.

1 As to applications see para 79 post.

2 As to applicants married to British citizens who are in Crown service overseas see para 39 post. Before 1 January 1983, the wife but not the husband of a citizen of the United Kingdom and colonies was entitled to be registered as a citizen under the British Nationality Act 1948 s 6(2) (now repealed), a right which in limited form was extended as a right to register as a British citizen until 31 December 1987 (see para 36 ante). As to citizenship of the United Kingdom and colonies see paras 16-21 ante. The current provisions give equal access to citizenship for both wives and husbands of citizens, imposing (shortened) residence conditions on both.

3 As to the Secretary of State see para 2 ante. As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante.

4 See *ibid* s 6(2), Sch 1 paras 3, 4.

5 *Ibid* s 6(2). A person is of full age if he has attained the age of 18 years, and is of full capacity if he is not of unsound mind: s 50(11). A woman's previous entitlement to registration under the British Nationality Act 1948 s 6(2) (now repealed) did not require her to be of full age or capacity.

6 British Nationality Act 1981 Sch 1 paras 1(1)(b), 3(e). The Secretary of State is entitled to adopt a high standard in assessing whether an applicant is of good character: see *Al Fayed v Secretary of State for the Home Department* [2001] Imm AR 134, sub nom *R v Secretary of State for the Home Department, ex p Al Fayed* (2000) Times, 7 September, CA.

7 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

8 British Nationality Act 1981 Sch 1 para 3(a). As to when a person is deemed to be absent from the United Kingdom see para 37 ante. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant as having been in the United Kingdom for the whole or any part of any period during which he would otherwise be deemed to have been absent: Sch 1 paras 2(b), 4. The Secretary of State may waive the need to fulfil all or any of the requirements specified in Sch 1 para 3(a) if on the date of the application the person to whom the applicant is married is serving in service to which s 2(1)(b) (as amended) (see para 26 ante) applies, that person's recruitment for that service having taken place in the United Kingdom: see Sch 1 paras 2(f), 4; and para 39 post.

9 *Ibid* Sch 1 para 3(a). See also s 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to when a person is deemed to be absent from the United Kingdom see para 37 ante. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant: (1) as fulfilling the requirement specified in the British Nationality Act 1981 Sch 1 para 3(a), although the number of days on which he was absent from the United Kingdom exceeds the number mentioned; (2) as having been in the United Kingdom for the whole or any part of any period during which he would otherwise be deemed to have been absent: Sch 1 paras 2(a), (b), 4. The Secretary of State may waive the need to fulfil all or any of the requirements specified in Sch 1 para 3(a) if on the date of the application the person to whom the applicant is married is serving in service to which s 2(1)(b) (as amended) (see para 26 ante) applies, that person's recruitment for that service having taken place in the United Kingdom: see Sch 1 paras 2(f), 4; and para 39 post.

10 *Ibid* Sch 1 para 3(b). See also s 50(10)(b) (as amended: see note 9 supra). As to when a person is deemed to be absent from the United Kingdom see para 37 ante. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant: (1) as fulfilling the requirement specified in Sch 1 para 3(b), although the number of days on which he was absent from the United Kingdom exceeds the number mentioned; (2) as having been in the United Kingdom for the whole or any part of any period during which he would otherwise be deemed to have been absent: Sch 1 paras 2(a), (b), 4. The Secretary of State may waive the need to fulfil all or any of the requirements specified in Sch 1 para 3(b) if on the date of the application the person to whom the applicant is married is serving in service to which s 2(1)(b) (as amended) (see para 26 ante) applies, that person's recruitment for that service having taken place in the United Kingdom: see Sch 1 paras 2(f), 4; and para 39 post.

11 For the meaning of 'immigration laws' see para 26 note 9 ante.

12 British Nationality Act 1981 Sch 1 para 3(c). See further para 39 note 13 post. Certain EEA nationals and members of their families are not subject to any restriction on the period for which they may remain: see the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 8; and para 237 post.

13 British Nationality Act 1981 Sch 1 para 3(d). If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant as fulfilling the requirement specified in Sch 1 para 3(d) although he was in the United Kingdom in breach of the immigration laws during the period mentioned: Sch 1 paras 2(d), 4.

UPDATE

38 Acquisition by naturalisation: spouses of British citizens

TEXT AND NOTE 2--Reference to an applicant who is married to a British citizen includes the civil partner of a British citizen: British Nationality Act 1981 s 6(2) (amended by the Civil Partnership Act 2004 Sch 27 para 72).

TEXT AND NOTE 5--Where a provision of the 1981 Act requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant's best interests: s 44A (added by Immigration, Asylum and Nationality Act 2006 s 49).

NOTE 12--SI 2000/2326 reg 8 now Immigration (European Economic Area) Regulations 2006, SI 2006/1003, reg 15.

NOTE 13--For the construction of a reference to being in the United Kingdom 'in breach of the immigration laws' see British Nationality Act 1981 s 50A; and PARA 26.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/39. Acquisition by naturalisation: Crown service overseas.

39. Acquisition by naturalisation: Crown service overseas.

A person in Crown service overseas is eligible for naturalisation as a British citizen without satisfying residence conditions¹, and they may be waived in the case of the spouse of such a person².

An applicant who, on the date of the application³, is serving outside the United Kingdom in Crown service under the government of the United Kingdom⁴ may be granted a certificate of naturalisation by the Secretary of State⁵ if the following requirements are fulfilled⁶:

- 60 (1) the applicant is of full age and capacity⁷, and is of good character⁸;
- 61 (2) the applicant has a sufficient knowledge of the English, Welsh or Scottish Gaelic language⁹;
- 62 (3) the applicant intends, if granted naturalisation as a British citizen, to make his home or principal home in the United Kingdom, or to continue in Crown service under the government of the United Kingdom, or to enter or continue in service under an international organisation of which the United Kingdom or its government is a member, or to enter or continue in service in the employment of a company or association established in the United Kingdom¹⁰.

An applicant whose spouse is a British citizen serving overseas, as a result of recruitment in the United Kingdom, in Crown service or in service designated as closely associated with government activities¹¹, must satisfy the naturalisation conditions for spouses of British citizens¹², save that (in addition to the discretion to waive or relax certain requirements in all such cases) the Secretary of State has a discretion to waive the need to fulfil all or any of the residence requirements¹³.

A certificate given by or on behalf of the Secretary of State that a person was at any time in Crown service under the government of the United Kingdom or that a person's recruitment for such service took place in the United Kingdom is conclusive evidence of that fact¹⁴.

1 As to the alternative requirement see the text to note 4 infra.

2 See the text and notes 11-13 infra.

3 As to applications see para 79 post.

4 See the British Nationality Act 1981 s 6(1), Sch 1 para 1(1)(a), (3). As to the meaning of 'United Kingdom' see para 5 note 1 ante.

5 As to the Secretary of State see para 2 ante. As to the exercise of discretion see *ibid* s 44; and para 2 ante.

6 See *ibid* s 6(1), Sch 1 para 1.

7 See *ibid* s 6(1). A person is of full age if he has attained the age of 18 years, and is of full capacity if he is not of unsound mind: s 50(11).

8 *Ibid* Sch 1 para 1(1)(b). The Secretary of State is entitled to adopt a high standard in assessing whether an applicant is of good character: see *Al Fayed v Secretary of State for the Home Department* [2001] Imm AR 134, sub nom *R v Secretary of State for the Home Department, ex p Al Fayed* (2000) Times, 7 September, CA.

9 British Nationality Act 1981 Sch 1 para 1(1)(c). If in the special circumstances of any particular case the Secretary of State thinks fit, he may waive the need to fulfil the requirement specified in Sch 1 para 1(1)(c) if he considers that because of the applicant's age or physical or mental condition it would be unreasonable to expect him to fulfil it: Sch 1 para 2(e).

10 *Ibid* Sch 1 para 1(1)(d). For these purposes, a company incorporated abroad but registered as an overseas company with a place of business in the United Kingdom is a company 'established' in the United Kingdom: *R v Secretary of State for the Home Department, ex p Mehta* [1992] Imm AR 512.

11 The spouse must be serving in service to which the British Nationality Act 1981 s 2(1)(b) (as amended) applies: see para 26 ante.

12 See para 38 ante.

13 See the British Nationality Act 1981 s 6(2), Sch 1 paras 2(f), 3, 4(d). As to the residence requirements which generally apply for an applicant who is the spouse of a British citizen see Sch 1 para 3(a), (b); and para 38 heads (2)-(4) ante.

While presence in breach of the immigration laws can be waived (see Sch 1 paras 2(d), 3(d), 4), there is no provision for waiver of the requirement that on the date of the application the applicant must not be subject under the immigration laws to any restriction on the period for which he may remain in the United Kingdom (see Sch 1 para 3(c)), even in the case of a person living with a British citizen spouse who is serving abroad. A person who is not in the United Kingdom may not have leave to enter or remain in the United Kingdom, since as a general rule leave lapses on departure (see the Immigration Act 1971 s 3(4); the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 13; and para 86 post). There is no positive requirement that the applicant have indefinite leave, only a negative requirement that the applicant should not be subject to any restriction on the period for which he may remain; a person who is not in the United Kingdom may not be subject to a restriction on the period for which he may remain in the United Kingdom, since such restriction can only be attached to leave to enter or remain and he may have none. Accordingly, there may be no need to waive the British Nationality Act 1981 Sch 1 para 3(c) in the case of a person living with a British citizen spouse who is serving abroad; it may simply have no effect.

14 See *ibid* s 45(4); and para 80 post.

UPDATE

39 Acquisition by naturalisation: Crown service overseas

TEXT AND NOTES 3-10--Also, head (4) the applicant has sufficient knowledge about life in the United Kingdom: British Nationality Act 1981 Sch 1 para 1(1)(ca) (added by the Nationality, Immigration and Asylum Act 2002 s 1(1)).

TEXT AND NOTE 7--Where a provision of the British Nationality Act 1981 requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant's best interests: s 44A (added by Immigration, Asylum and Nationality Act 2006 s 49).

NOTE 9--There is now a discretion to waive the need to fulfil either or both of the requirements specified in the 1981 Act Sch 1 para 1(1)(c) and (ca) (see TEXT AND NOTES 3-10) if it is unreasonable to expect the applicant to fulfil it or them: Sch 1 para 2(e) (amended by the 2002 Act s 1(2)).

NOTE 13--British Nationality Act 1981 s 6(2), Sch 1 para 4(d) amended: Civil Partnership Act 2004 Sch 27 paras 72, 78.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/40. Citizenship by descent.

40. Citizenship by descent.

Normally, British citizenship can only be transmitted to one generation; a person who is a British citizen by descent does not as a general rule automatically pass that citizenship to his or her children¹. For this purpose British citizenship 'by descent' is a term of art², with an exhaustive statutory definition³. By statute, the following British citizens are British citizens by descent:

- 63 (1) a person born outside the United Kingdom⁴ on or after 1 January 1983⁵ who is a British citizen by virtue only of his father or mother being at the time of the birth⁶ a British citizen otherwise than by descent⁷;
 - 64 (2) a person born outside the United Kingdom on or after 1 January 1983 who is registered as a British citizen⁸, being the child of a British citizen by descent one of whose parents was a British citizen otherwise than by descent⁹;
 - 65 (3) a person born outside the United Kingdom on or after 1 January 1983 who is registered as a British citizen under the transitional provisions¹⁰ for children born between 1 January 1983 and 31 December 1987 to certain male former citizens of the United Kingdom and colonies by descent¹¹;
 - 66 (4) a person born outside the United Kingdom before 1 January 1983 who was a citizen of the United Kingdom and colonies by descent¹², and became a British citizen on 1 January 1983¹³; but such a person is a British citizen otherwise than by descent if his father was at the time of his birth serving outside the United Kingdom in a specified type of public service¹⁴;
 - 67 (5) a person born outside the United Kingdom before 1 January 1983 who became a British citizen on 1 January 1983¹⁵ and immediately before that date was deemed under any provision of the British Nationality Acts 1948 to 1965¹⁶ to be a citizen of the United Kingdom and colonies by descent only, or would have been so deemed if male¹⁷; but such a person is a British citizen otherwise than by descent if his father was at the time of his birth serving outside the United Kingdom in a specified type of public service¹⁸;
 - 68 (6) a person born outside the United Kingdom before 1 January 1983 who became a British citizen on 1 January 1983¹⁹ and immediately before that date had the right of abode²⁰ in the United Kingdom:
- 3
- 3. (a) by virtue only of connection with the United Kingdom through a parent or grandparent who had citizenship of the United Kingdom and colonies by birth, adoption, naturalisation or registration in the United Kingdom, the Channel Islands or the Isle of Man²¹; or
 - 4. (b) by virtue only of such a connection and settlement in the United Kingdom with five years' ordinary residence there²²;
- 4
- 69 but such a person is a British citizen otherwise than by descent if his father was at the time of his birth serving outside the United Kingdom in a specified type of public service²³;

- 70 (7) a woman born outside the United Kingdom before 1 January 1983 who became a British citizen on 1 January 1983²⁴ and immediately before that date had the right of abode²⁵ in the United Kingdom by virtue only of marriage to a man who immediately before that date had the right of abode:
- 5
5. (a) by virtue only of connection with the United Kingdom through a parent or grandparent who had citizenship of the United Kingdom and colonies by birth, adoption, naturalisation or registration in the United Kingdom, the Channel Islands or the Isle of Man²⁶; or
6. (b) by virtue only of such a connection and settlement in the United Kingdom with five years' ordinary residence there²⁷;
- 6
- 71 but she is a British citizen otherwise than by descent if her father was at the time of her birth serving outside the United Kingdom in a specified type of public service²⁸;
- 72 (8) a woman born outside the United Kingdom before 1 January 1983 who became a British citizen on 1 January 1983²⁹ and immediately before that date was a citizen of the United Kingdom and colonies by registration³⁰ on the basis of marriage to a man who became a British citizen by descent on 1 January 1983 or would have done so but for his earlier death or renunciation³¹ of citizenship³²; but she is a British citizen otherwise than by descent if her father was at the time of her birth serving outside the United Kingdom in a specified type of public service³³;
- 73 (9) a person registered as a British citizen under the provision for discretionary registration of minors³⁴ whose father or mother was at the time of his birth a British citizen or (if the birth was before 1 January 1983) a citizen of the United Kingdom and colonies who became a British citizen on 1 January 1983³⁵ or would have done so but for his or her death³⁶;
- 74 (10) a person registered as a British citizen³⁷ whose entitlement derived from his being a British overseas territories citizen³⁸ treated as a national of the United Kingdom for the purposes of the European Community treaties³⁹;
- 75 (11) a woman born outside the United Kingdom before 1 January 1983 who was registered as a British citizen⁴⁰ on the basis of marriage to a man who on 1 January 1983 became a British citizen⁴¹ by descent or would have done so but for his earlier death or renunciation⁴² of citizenship of the United Kingdom and colonies⁴³; but she is a British citizen otherwise than by descent if her father was at the time of her birth serving outside the United Kingdom in a specified type of public service⁴⁴;
- 76 (12) a person who registered as a British citizen⁴⁵ following previous renunciation of citizenship of the United Kingdom and colonies⁴⁶ who, had he not renounced it, would have become a British citizen by descent on 1 January 1983⁴⁷;
- 77 (13) a person who, having formerly been a British citizen by descent, renounced and subsequently resumed his British citizenship by registration⁴⁸;
- 78 (14) a person born in a British overseas territory⁴⁹ on or after 1 January 1983 who is a British citizen by virtue of provisions contained in the British Nationality Act 1981⁵⁰ for reducing statelessness⁵¹;
- 79 (15) a person who became a British citizen⁵² with effect from 1 January 1983 only because he was a British overseas territories citizen with a parent or grandparent born, naturalised or registered in the Falkland Islands as a citizen of the United Kingdom and colonies⁵³;
- 80 (16) a woman who became a British citizen⁵⁴ with effect from 1 January 1983 only by virtue of previous marriage to a man who was, or had a parent or grandparent who was, born, naturalised or registered in the Falkland Islands as a citizen of the United Kingdom and colonies⁵⁵;
- 81 (17) a person registered as a British citizen under the British Nationality (Hong Kong) Act 1990⁵⁶ as the spouse or child of a person registered as a British citizen pursuant to the Citizenship Selection Scheme under that Act⁵⁷;

- 82 (18) a person, previously a British overseas territories citizen, who became a British citizen⁵⁸ with effect from 21 May 2002 by virtue of the British Overseas Territories Act 2002 and who: (a) immediately before that date was a British overseas territories citizen by descent; and (b) where at that time he was a British citizen as well as a British overseas territories citizen, was then a British citizen by descent⁵⁹;
- 83 (19) a person born on or after 26 April 1969 and before 1 January 1983 whose mother was at the time a citizen of the United Kingdom and colonies by virtue of her birth in the British Indian Ocean Territory and who, having previously been neither a British citizen nor a British overseas territories citizen, became a British citizen⁶⁰ with effect from 21 May 2002 by virtue of the British Overseas Territories Act 2002⁶¹.

1 le unless the parent is in government or European Community service abroad: see the British Nationality Act 1981 s 2(1)-(3) (as amended); and para 26 ante.

2 Thus some who acquire citizenship through a parent are not classified as British citizens by descent (eg children of persons in Crown service abroad: see note 1 supra; and para 26 ante), while some who acquire citizenship otherwise than through a parent are so classified (eg certain women acquiring citizenship or right of abode by marriage: see heads (7) and (8) in the text).

3 A British citizen by descent cannot overcome the statutory classification by naturalising to become a British citizen otherwise than by descent: *R (on the application of Ullah) v Secretary of State for the Home Department* [2001] EWCA Civ 659, [2002] QB 525.

4 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

5 le the date on which the British Nationality Act 1981 came into force: see para 5 note 1 ante.

6 See para 26 notes 6, 7 ante.

7 See the British Nationality Act 1981 s 14(1)(a). See also s 2(1)(a); and para 26 ante. The citizenship acquired by a child born outside the United Kingdom to a British citizen in government or European Community service outside the United Kingdom is British citizenship otherwise than by descent, even if the parent is a citizen by descent: see ss 2(1)(b), (c), 14(1)(a); and para 26 ante.

8 le under *ibid* s 3(2): see para 28 ante.

9 See *ibid* s 14(1)(a).

10 le under *ibid* s 9: see para 36 ante.

11 See *ibid* s 14(1)(a). As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

12 le by virtue of the British Nationality Act 1948 s 5 (now repealed), which conferred citizenship on a person whose father (but not mother) was a citizen otherwise than by descent: see para 19 ante.

13 See the British Nationality Act 1981 s 14(1)(b)(i). As to those who became British citizens on 1 January 1983 see para 24 ante.

14 See *ibid* s 14(2). The specified types of public service are: (1) Crown service under the government of the United Kingdom, for which he was recruited in the United Kingdom; (2) service designated under s 2(3) (see para 26 ante) as being closely associated with the activities outside the United Kingdom of Her Majesty's government in the United Kingdom, for which he was recruited in the United Kingdom; and (3) service under a Community institution, for which he was recruited in a country which at the time of the recruitment was a Community member state: see s 14(2), (3). This excepting provision is necessary because under the British Nationality Act 1948 s 5 (now repealed) (see note 12 supra; and para 19 ante) children born before 1 January 1983 of citizens by descent in Crown service were citizens by descent, whereas the British Nationality Act 1981 is so worded that such children born after 1 January 1983 are not citizens by descent: see ss 2(1), 14(1)(a); note 7 supra; and para 26 ante. A certificate given by or on behalf of the Secretary of State that a person was at any time in Crown service under the government of the United Kingdom or that a person's recruitment for such service took place in the United Kingdom is conclusive evidence of that fact: see s 45(4); and para 80 post.

15 See note 13 supra; and para 24 ante.

- 16 As to the British Nationality Acts 1948 to 1965 see para 5 note 5 ante.
- 17 See the British Nationality Act 1981 s 14(b)(ii). Prior to the British Nationality Act 1981 women could not transmit citizenship to their children, so there was no need to deem their citizenship to be by descent only, since the purpose of such deeming was to prevent transmission. As to deemed descent see eg the British Nationality Act 1948 ss 12(8), 13, Sch 3 para 3 (all now repealed); the British Nationality (No 2) Act 1964 s 1(4) (now repealed); and para 19 note 6 ante.
- 18 See note 14 supra.
- 19 See note 13 supra; and para 24 ante.
- 20 As to the right of abode prior to 1 January 1983 see para 22 ante.
- 21 As to such a connection see the Immigration Act 1971 s 2(1)(b) (as then in force).
- 22 See the British Nationality Act 1981 s 14(1)(b)(iii). As to the requirement of settlement with five years' ordinary residence see the Immigration Act 1971 s 2(1)(c) (as then in force).
- 23 See note 14 supra.
- 24 See note 13 supra; and para 24 ante.
- 25 The woman would have had the right of abode under the Immigration Act 1971 s 2(2) (as then in force): see para 22 ante.
- 26 See note 21 supra.
- 27 See the British Nationality Act 1981 s 14(1)(b)(iii). See also note 22 supra.
- 28 See note 14 supra.
- 29 See note 13 supra; and para 24 ante.
- 30 Ie under the British Nationality Act 1948 s 6(2) (now repealed).
- 31 See para 21 ante.
- 32 See the British Nationality Act 1981 s 14(1)(b)(iv).
- 33 See note 14 supra.
- 34 Ie the British Nationality Act 1981 s 3(1): see para 28 ante. For the meaning of 'minor' see para 26 note 11 ante.
- 35 See note 13 supra; and para 24 ante.
- 36 See the British Nationality Act 1981 s 14(1)(c).
- 37 Ie by virtue of *ibid* s 5 (as amended): see para 30 ante.
- 38 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8 ante, 44-57 post.
- 39 See the British Nationality Act 1981 s 14(1)(d). Only Gibraltar fall into this category: see para 30 ante.
- 40 Ie under *ibid* s 8: see para 36 ante. Section 8 temporarily extended the former right of a woman to registration under the British Nationality Act 1948 s 6(2) (repealed) on the basis of marriage to a citizen of the United Kingdom and colonies: see head (8) in the text; and para 36 ante.
- 41 See note 13 supra; and para 24 ante.
- 42 See para 21 ante.
- 43 See the British Nationality Act 1981 s 14(1)(e).
- 44 See note 14 supra.

45 Ie under the British Nationality Act 1981 s 10, which provides for registration following renunciation of previous citizenship of certain persons with an appropriate qualifying connection with the United Kingdom: see para 41 post.

46 See para 21 ante.

47 See the British Nationality Act 1981 s 14(1)(f). See also note 13 supra; and para 24 ante. This ensures that the person who renounces and resumes citizenship will not be in a better position than if he had never renounced it.

48 See *ibid* s 14(1)(g). As to resuming citizenship by registration see s 13; and para 41 post. Cf note 45 supra.

49 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 post.

50 Ie the British Nationality Act 1981 Sch 2 para 2 (as amended): see para 26 ante. As to other provisions for reducing statelessness see para 35 ante.

51 See *ibid* s 14(1)(h) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)).

52 Ie under the British Nationality (Falkland Islands) Act 1983.

53 See *ibid* s 3(1); and see para 24 heads (i), (ii)(b) ante. A person who became a British citizen with effect from 1 January 1983 by virtue of the application to him of any of the provisions of the British Nationality Act 1981 as well as by virtue of the application to him of any provision of the British Nationality (Falkland Islands) Act 1983 is a British citizen by descent if, and only if, he: (1) would have been a British citizen by descent if the British Nationality (Falkland Islands) Act 1983 had not been passed; and (2) would not be a British citizen but for s 1(1)(b)(ii) (see para 24 head (ii)(b) ante) or s 1(1)(b)(iii) (see head (16) in the text; note 55 infra; and para 24 head (ii)(c) ante): see s 3(2).

54 Ie under the British Nationality (Falkland Islands) Act 1983.

55 See *ibid* s 3(1); and see para 24 heads (i), (ii)(c) ante. See also note 53 supra.

56 Ie by virtue of the British Nationality (Hong Kong) Act 1990 s 1(4), Sch 2: see para 32 ante.

57 See *ibid* s 2(1); and para 32 ante. As to registration as a British citizen pursuant to the Citizenship Selection Scheme see s 1(1), Sch 1; and para 32 ante.

58 Ie by virtue of the British Overseas Territories Act 2002 s 3: see para 25 ante.

59 See *ibid* s 3(3); and para 25 ante.

60 Ie by virtue of *ibid* s 3(1): see para 25 ante.

61 See *ibid* s 6(2); and para 25 ante.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/41. Renunciation and resumption.

41. Renunciation and resumption.

A British citizen of full age and capacity¹ may renounce his citizenship by declaration, upon registration of which he ceases to be a British citizen². However, the person must have or be about to acquire some other citizenship or nationality³. The Secretary of State⁴ must be satisfied on this point; and even if the declaration is registered, should the renouncer not acquire some such other citizenship within six months, the registration will be of no effect and he will remain a British citizen⁵. The Secretary of State may withhold registration of a declaration of renunciation in wartime⁶.

A person who has renounced British citizenship is entitled, once only, to be registered as a British citizen if he is of full capacity, and had to renounce his British citizenship in order to retain or acquire some other citizenship or nationality⁷. In addition, the Secretary of State has a discretion⁸ to register any person of full capacity who renounced British citizenship, whatever the reason for the renunciation⁹.

Previous nationality law provided for renunciation and resumption of citizenship of the United Kingdom and colonies¹⁰. That citizenship cannot now be resumed as it no longer exists; but there is provision for a person who renounced it to be registered as a British citizen. A person who renounced citizenship of the United Kingdom and colonies is entitled, once only, to be registered as a British citizen if on 31 December 1982¹¹ he would have been entitled to registration as a citizen of the United Kingdom and colonies under the British Nationality Act 1964¹² on the basis of a qualifying connection with the United Kingdom or, in the case of a woman, marriage to a person with such a qualifying connection¹³. In addition, the Secretary of State has a discretion to register as a British citizen any person who renounced citizenship of the United Kingdom and colonies, provided that he has a qualifying connection with the United Kingdom or that, in the case of a woman, she has been married to a person who has or would if living have such a connection¹⁴. A person is to be taken to have the appropriate qualifying connection with the United Kingdom if he, his father or his father's father: (1) was born in the United Kingdom; or (2) is or was a person naturalised in the United Kingdom; or (3) was registered as a citizen of the United Kingdom and colonies in the United Kingdom or in a Commonwealth country¹⁵.

1 For the purposes of the British Nationality Act 1981, a person is of full age if he has attained the age of 18 years, and is of full capacity if he is not of unsound mind: s 50(11). For the purpose of renunciation only, a person who has been married is deemed to be of full age: s 12(5).

2 See *ibid* s 12(1), (2). As to declarations of renunciation see the British Nationality (General) Regulations 1982, SI 1982/986, regs 8, 9, Sch 5 (reg 9 amended by virtue of the British Overseas Territories Act 2002 s 1(2)). As to the power to make regulations see para 6 ante.

3 See the British Nationality Act 1981 s 12(3).

4 As to the Secretary of State see para 2 ante.

5 See the British Nationality Act 1981 s 12(3).

6 See *ibid* s 12(4).

7 See *ibid* s 13(1), (2).

8 As to the exercise of discretion see *ibid* s 44; and para 2 ante.

9 See *ibid* s 13(3).

10 See para 21 ante. As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

11 *Ie* immediately before the commencement of the British Nationality Act 1981: see para 5 note 1 ante.

12 *Ie* under the British Nationality Act 1964 s 1(1) (now repealed), which made provision for registration of persons who renounced citizenship in order to acquire or retain citizenship of a Commonwealth country.

13 See the British Nationality Act 1981 s 10(1), (3). As to the meaning of 'United Kingdom' see para 5 note 1 ante. The qualifying connection is that specified in s 10(4) (see the text and note 15 *infra*), and not that specified in the British Nationality Act 1964: *R v Secretary of State for the Home Department, ex p Patel and Wahid* [1991] Imm AR 25, DC.

14 See the British Nationality Act 1981 s 10(2).

15 *Ibid* s 10(4). The reference in the text to a Commonwealth country is a reference to a country which was at the time of registration a Commonwealth country listed in the British Nationality Act 1948 s 1(3) (repealed). See further para 11 note 4 ante.

If the qualifying connection is with a British overseas territory (formerly known as a dependent territory) (see para 44 note 1 post), the resumed citizenship will be British overseas territories citizenship (formerly known as British dependent territories citizenship) (see paras 8 ante, 44-57 post): see the British Nationality Act 1981 s 22 (as amended); and para 56 post.

UPDATE

41 Renunciation and resumption

TEXT AND NOTE 1--Where a provision of the British Nationality Act 1981 requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant's best interests: s 44A (added by Immigration, Asylum and Nationality Act 2006 s 49).

NOTE 1--1981 Act s 12(5) amended: Civil Partnership Act 2004 Sch 27 para 74.

NOTE 2--SI 1982/986 regs 8, 9, Sch 5 now the British Nationality (General) Regulations 2003, SI 2003/548, regs 8, 9, Sch 5 (Sch 5 amended by SI 2005/2114, SI 2007/3137).

TEXT AND NOTES 7, 9, 13, 14--An application for registration of an adult or young person as a British citizen under the 1981 Act ss 10(1), (2), 13(1), (3) must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character: British Nationality Act 1981 s 41A(1) (s 41A(1), (5) added by Borders, Citizenship and Immigration Act 2009 s 47(1) to replace corresponding provision in Immigration, Asylum and Nationality Act 2006 s 58). 'Adult or young person' means a person who has attained the age of ten at the time when the application is made: British Nationality Act 1981 s 41A(5).

NOTE 14--1981 Act s 10(2) amended: Civil Partnership Act 2004 Sch 27 para 73.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/42. Deprivation and the effect of fraud.

42. Deprivation and the effect of fraud.

The Secretary of State¹ may by order deprive a person of British citizenship acquired as a result of registration or naturalisation, on the ground that it was obtained by fraud, false representation or concealment of any material fact². However, a person is not to be deprived of British citizenship unless the Secretary of State is satisfied that it is not conducive to the public good that that person should continue to be a British citizen³. The persons who may be deprived of British citizenship under these provisions are: (1) any British citizen who was registered or naturalised as such on or after 1 January 1983⁴; (2) any person who became a British citizen on 1 January 1983⁵ having previously been registered as a citizen of the United Kingdom and colonies⁶; (3) any person who before 1 January 1983 became a British subject⁷ or a citizen of the Republic of Ireland⁸ by virtue of a certificate of naturalisation⁹. A person threatened with deprivation is entitled to be given notice in writing of the ground or grounds of the proposed order¹⁰, and to apply for an inquiry¹¹.

However, fraud of a sufficiently serious and causative nature may render the registration or naturalisation acquired by the fraud of no effect¹². The person will never have been a citizen, and therefore there is nothing of which he can be deprived; one consequence of this is that the overriding safeguard, preventing deprivation unless it is not conducive to the public good that citizenship be retained, is of no effect in such cases. Nor is there a right to an inquiry; but a

person whose citizenship is alleged to be a nullity on this ground may bring the matter before the courts¹³.

1 As to the Secretary of State see para 2 ante.

2 See the British Nationality Act 1981 s 40(1). As to the exercise of discretion see s 44; and para 2 ante. As to the removal of a person's name from the register after an order has been made depriving him of British citizenship see the British Nationality (General) Regulations 1982, SI 1982/986, reg 12. As to the cancellation of a certificate of naturalisation see reg 13. As to the power to make regulations see para 6 ante.

3 British Nationality Act 1981 s 40(5)(a).

4 Ibid s 40(2)(a) (amended by the British Nationality (Falkland Islands) Act 1983 s 4(3)); and see the British Nationality (Hong Kong) Act 1990 s 2(3). The date referred to in the text is the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

5 See para 24 ante.

6 British Nationality Act 1981 s 40(2)(b). As to registration as a citizen of the United Kingdom and colonies see para 19 ante. As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

7 I.e. a British subject according to the law then in force, under which all citizens of the United Kingdom and colonies and all citizens of Commonwealth countries were British subjects, and there was in addition a class of British subjects without citizenship: see para 9 ante. This category therefore includes persons naturalised as citizens of the United Kingdom and colonies, persons naturalised as British subjects before 1 January 1949 who did not acquire any citizenship on that date, and (if their British citizenship is so based) persons naturalised as citizens of a Commonwealth country.

8 Or, before 18 April 1949, Eire: see the Ireland Act 1949.

9 British Nationality Act 1981 s 40(2)(c). A Commonwealth citizen (equivalent to British subject) or Irish citizen was entitled to register as a citizen of the United Kingdom and colonies under the British Nationality Act 1948 s 6(1) (as amended; now repealed) and later under s 5A (as added; now repealed): see para 19 ante. It seems, therefore, that if a person naturalised as a British subject or Irish citizen obtained that status by fraud, deprivation is a possibility, even though the subsequent registration as a citizen of the United Kingdom and colonies was not so obtained.

10 See the British Nationality Act 1981 s 40(6); and the British Nationality (General) Regulations 1982, SI 1982/986, reg 10.

11 See the British Nationality Act 1981 s 40(7); and the British Nationality (General) Regulations 1982, SI 1982/986, reg 11. The inquiry is held by a committee appointed by the Secretary of State: see the British Nationality Act 1981 s 40(7). The chairman of the committee must possess judicial experience: see s 40(7). The Secretary of State may, by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make rules in relation to such a committee: see s 40(8), (9). As to the rules that have been made see the British Citizenship (Deprivation) Rules 1982, SI 1982/988.

12 *R v Secretary of State for the Home Department, ex p Sultan Mahmood* [1981] 1 QB 58n, [1980] 3 WLR 312n, CA; *R v Secretary of State for the Home Department, ex p Parvaz Akhtar* [1981] QB 46, [1980] 2 All ER 735, CA; *R v Secretary of State for the Home Department, ex p Puttick* [1981] QB 767, [1981] 1 All ER 776, DC; *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL. However, see *R v Secretary of State for the Home Department, ex p Ejaz* [1994] QB 496, [1994] 2 All ER 436, CA (the applicant, holding a certificate of naturalisation, is a British citizen even if that certificate had been obtained through fraud unless and until she is deprived of that status by the Secretary of State under the British Nationality Act 1981 s 40 (as amended)).

13 Such a matter is normally brought before the courts by application for judicial review, seeking a declaration and, if appropriate, a quashing order. See the British Nationality Act 1981 s 44(3); and para 2 ante. As to judicial review see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

UPDATE

42, 43 Deprivation and the effect of fraud, Deprivation for disloyalty or imprisonment

Replaced. Now, the Secretary of State may by order deprive a person of a citizenship status if he is satisfied that deprivation is conducive to the public good: British Nationality Act 1981 s 40(2) (s 40(2) substituted by the Immigration, Asylum and Nationality Act 2006 s 56(1)). But the Secretary of State may not make such an order if he is satisfied that the order would make a person stateless: 1981 Act s 40(4) (s 40 as substituted). A reference to a person's citizenship status is a reference to his status as a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas), a British protected person, or a British subject: s 40(1) (s 40 as so substituted). The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of fraud, false representation, or concealment of a material fact: s 40(3) (s 40 as so substituted).

Before making an order depriving a person of his citizenship, the Secretary of State must give the person written notice specifying that the Secretary of State has decided to make an order, the reasons for the order, and the person's right of appeal under the Special Immigration Appeals Commission Act 1997 s 2B or s 40A(1): 1981 Act s 40(5) (s 40 as so substituted). The rights of appeal of a person who is given such notice are set out in s 40A (added by the 2002 Act s 4; and amended by Immigration, Asylum and Nationality Act 2006 Sch 1 para 13).

Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of fraud, false representation, or concealment of a material fact: 1981 Act s 40(6) (s 40 as so substituted).

42 Deprivation and the effect of fraud

NOTE 2--SI 1982/986 regs 12, 13 now British Nationality (General) Regulations 2003, SI 2003/548, regs 11, 12.

NOTE 4--1990 Act s 2(3) amended: Nationality, Immigration and Asylum Act 2002 (Consequential and Incidental Provisions) Order 2003, SI 2003/1016.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(3) BRITISH CITIZENSHIP/43. Deprivation for disloyalty or imprisonment.

43. Deprivation for disloyalty or imprisonment.

The Secretary of State¹ may by order deprive of his British citizenship any British citizen who was registered or naturalised as such on or after 1 January 1983² or who before 1 January 1983 became a British subject³ or a citizen of the Republic of Ireland⁴ by virtue of a certificate of naturalisation⁵, on the grounds of disloyalty or imprisonment⁶. Thus a British citizen may be deprived of citizenship if the Secretary of State is satisfied that that citizen:

- 84 (1) has shown himself by act or speech to be disloyal or disaffected towards Her Majesty⁷; or

- 85 (2) has during wartime unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in the war⁸; or
- 86 (3) has, within five years of his registration or naturalisation, been sentenced in any country to imprisonment for not less than 12 months⁹.

However, a person may not be deprived of citizenship on the ground mentioned in head (3) above if it appears to the Secretary of State that he would thereupon become stateless¹⁰, nor may any person be deprived of British citizenship unless the Secretary of State is satisfied that it is not conducive to the public good that that person should continue to be a British citizen¹¹.

A person threatened with deprivation is entitled to be given notice in writing of the ground or grounds of the proposed order¹², and to apply for an inquiry¹³.

1 As to the Secretary of State see para 2 ante.

2 See the British Nationality Act 1981 s 40(4), applying s 40(2)(a) (as amended) (see para 42 head (1) and note 4 ante). The date referred to in the text is the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

3 See para 42 note 7 ante.

4 Or, before 18 April 1949, Eire: see the Ireland Act 1949.

5 See the British Nationality Act 1981 s 40(4), applying s 40(2)(c) (as amended) (see para 42 head (3) and note 9 ante).

6 See the British Nationality Act 1981 s 40(3), (4). As to the exercise of discretion see s 44; and para 2 ante. As to the removal of a person's name from the register after an order has been made depriving him of British citizenship see the British Nationality (General) Regulations 1982, SI 1982/986, reg 12. As to the cancellation of a certificate of naturalisation see reg 13. As to the power to make regulations see para 6 ante.

7 British Nationality Act 1981 s 40(3)(a).

8 Ibid s 40(3)(b).

9 Ibid s 40(3)(c), (4).

10 Ibid s 40(5)(b).

11 Ibid s 40(5)(a).

12 See the British Nationality Act 1981 s 40(6); and the British Nationality (General) Regulations 1982, SI 1982/986, reg 10.

13 See the British Nationality Act 1981 s 40(7); and the British Nationality (General) Regulations 1982, SI 1982/986, reg 11. See further the British Nationality Act 1981 s 40(8), (9); the British Citizenship (Deprivation) Rules 1982, SI 1982/988; and para 42 note 11 ante.

UPDATE

42, 43 Deprivation and the effect of fraud, Deprivation for disloyalty or imprisonment

Replaced. Now, the Secretary of State may by order deprive a person of a citizenship status if he is satisfied that deprivation is conducive to the public good: British Nationality Act 1981 s 40(2) (s 40(2) substituted by the Immigration, Asylum and Nationality Act 2006 s 56(1)). But the Secretary of State may not make such an order if he is satisfied that the order would make a person stateless: 1981 Act s 40(4) (s 40 as substituted). A reference to a person's citizenship status is a reference to his status as

a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas), a British protected person, or a British subject: s 40(1) (s 40 as so substituted). The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of fraud, false representation, or concealment of a material fact: s 40(3) (s 40 as so substituted).

Before making an order depriving a person of his citizenship, the Secretary of State must give the person written notice specifying that the Secretary of State has decided to make an order, the reasons for the order, and the person's right of appeal under the Special Immigration Appeals Commission Act 1997 s 2B or s 40A(1): 1981 Act s 40(5) (s 40 as so substituted). The rights of appeal of a person who is given such notice are set out in s 40A (added by the 2002 Act s 4; and amended by Immigration, Asylum and Nationality Act 2006 Sch 1 para 13).

Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of fraud, false representation, or concealment of a material fact: 1981 Act s 40(6) (s 40 as so substituted).

43 Deprivation for disloyalty or imprisonment

NOTE 6--SI 1982/986 regs 12, 13 now the British Nationality (General) Regulations 2003, SI 2003/548, regs 11, 12.

NOTES 12, 13--See now *ibid* reg 10.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP/44. In general.

(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP

44. In general.

British overseas territories¹ and British overseas territories citizens were formerly known as dependent territories and British dependent territories citizens². From 1 January 1983³ British overseas territories citizens, whose British nationality comes from their connection with a British overseas territory, were distinguished from British citizens⁴, whose nationality comes from a connection with the United Kingdom⁵ itself. The British Nationality Act 1981 makes provision enabling certain British overseas territories citizens to acquire British citizenship by registration⁶. However, since 21 May 2002⁷ most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship⁸.

British overseas territories citizenship does not carry with it the right of abode in the United Kingdom⁹. The right of abode in a British overseas territory is a matter for the internal law of that territory.

¹ 'British overseas territory' means a territory mentioned in the British Nationality Act 1981 Sch 6 (as amended): s 50(1) (definition added by the British Overseas Territories Act 2002 s 1(1)(a)). The territories which

are British overseas territories are: Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; Cayman Islands; Falkland Islands; Gibraltar; Montserrat; Pitcairn, Henderson, Ducie and Oeno Islands; St Helena and Dependencies; South Georgia and the South Sandwich Islands; the Sovereign Base Areas of Akrotiri and Dhekelia (ie the areas mentioned in the Cyprus Act 1960 s 2(1): see COMMONWEALTH vol 13 (2009) PARAS 748, 864); Turks and Caicos Islands; Virgin Islands: British Nationality Act 1981 Sch 6 (amended by the British Overseas Territories Act 2002 s 1(1)(c); the St Christopher and Nevis Modification of Enactments Order 1983, SI 1983/882, art 2; the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 5; and the British Nationality Act 1981 (Amendment of Schedule 6) Order 2001, SI 2001/3497, art 2). See further COMMONWEALTH vol 13 (2009) PARA 801 et seq.

2 See para 8 note 8 ante.

3 Ie the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

4 As to British citizens and citizenship see paras 8, 23-43 ante.

5 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

6 See para 29 ante.

7 Ie the date of the commencement of the British Overseas Territories Act 2002 s 3: see s 8; and the British Overseas Territories Act 2002 (Commencement) Order 2002, SI 2002/1252, art 2(a).

8 See the British Overseas Territories Act 2002 s 3; and para 25 ante.

9 As to the right of abode see para 14 ante.

UPDATE

44 In general

NOTE 1--Reference to St Helena and Dependencies now to St Helena, Ascension and Tristan da Cunha: British Nationality Act 1981 Sch 6 (amended by SI 2009/2744).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP/45. Automatic acquisition on 1 January 1983.

45. Automatic acquisition on 1 January 1983.

A person who on 31 December 1982¹ was a citizen of the United Kingdom and colonies², and who satisfied one of a number of conditions connecting him with a British overseas territory³, became a British overseas territories citizen⁴ on 1 January 1983⁵. The conditions were as follows, namely that:

- 87 (1) he acquired his citizenship of the United Kingdom and colonies by birth, naturalisation⁶ or registration in a British overseas territory⁷;
- 88 (2) at the time of his birth one of his parents⁸ was a citizen of the United Kingdom and colonies by birth, naturalisation or registration in a British overseas territory or was himself born to a parent who at the time of that birth was a citizen by birth, naturalisation or registration in such a territory⁹;
- 89 (3) being a woman, she was at any time before 1 January 1983 the wife of a man who on that date became a British overseas territories citizen under head (1) or head (2) above, or who would have done but for his death¹⁰;
- 90 (4) he became a citizen of the United Kingdom and colonies by registration, otherwise than in a British overseas territory, as a minor child¹¹ or as a stateless person¹², and his father or mother (in the case of a minor) or his mother (in the case

of a stateless person) was a citizen of the United Kingdom and colonies at the time of the registration or would have been but for his or her death and became a British overseas territories citizen on 1 January 1983 or would have done but for his or her death¹³;

- 91 (5) he became a citizen of the United Kingdom and colonies by registration¹⁴, otherwise than in a British overseas territory, by virtue (inter alia) of a male ancestor who satisfied specified conditions¹⁵ and who was born or naturalised in a British overseas territory or became a British subject by annexation of any territory included in a British overseas territory¹⁶;
- 92 (6) he had resumed citizenship of the United Kingdom and colonies by registration¹⁷, otherwise than in a British overseas territory, by virtue of an appropriate qualifying connection¹⁸ with a British overseas territory or, in the case of a woman, by virtue of having been married to a man who had such a connection at the time of registration (or would have done but for his death)¹⁹.

A person was not disqualified from becoming a British overseas territories citizen under the provisions described above merely because he also became a British citizen on 1 January 1983²⁰.

1 He immediately before the commencement of the British Nationality Act 1981: see note 5 infra.

2 As to citizens of the United Kingdom and colonies see paras 16-21 ante.

3 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.

4 British overseas territories citizens were formerly known as British dependent territories citizens: see paras 8, 44 ante. Since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship: see the British Overseas Territories Act 2002 s 3; and para 25 ante.

5 See the British Nationality Act 1981 s 23 (as amended); and the text and notes 6-19 infra. The date referred to in the text is the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

6 A person is taken to have been naturalised in a British overseas territory if, but only if: (1) a certificate of naturalisation was granted to him under any of the former nationality Acts by the Governor of that territory or by a person, or office-holder, specified in a direction given in relation to that territory under the West Indies Act 1967 Sch 3 para 4 (now repealed); or (2) his name was included in a certificate of naturalisation granted by the Governor of that territory and he was deemed to be a person to whom the certificate of naturalisation was granted by virtue of the British Nationality and Status of Aliens Act 1914 s 27(2) (now repealed); or (3) he is a person who by the law in force in that territory enjoyed the privileges of naturalisation within that territory only: British Nationality Act 1981 s 50(6)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). For the meaning of 'the former nationality Acts' see para 6 note 26 ante. The British Nationality and Status of Aliens Act 1914 is now known as the Status of Aliens Act 1914: see para 5 note 9 ante.

7 See the British Nationality Act 1981 s 23(1)(a) (s 23(1) amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)).

8 See para 26 notes 6, 7 ante.

9 See the British Nationality Act 1981 s 23(1)(b) (as amended: see note 7 supra). For the purposes of s 23(1)(b) (as amended), references to citizenship of the United Kingdom and colonies, in relation to a time before 1949 (ie before the British Nationality Act 1948 came into force: see para 5 note 7 ante), are to be construed as references to British nationality (note that prior to 1 January 1949 the single common nationality was the status of British subject: see para 9 ante): British Nationality Act 1981 s 23(6).

10 See *ibid* s 23(1)(c) (as amended: see note 7 supra).

11 He under the British Nationality Act 1948 s 7 (now repealed): see para 19 ante. Under this provision the Secretary of State had a discretion to register the minor child of any citizen of the United Kingdom and colonies upon application of the parent or guardian, and in special circumstances to register any minor: see s 7 (now repealed). See further para 77 note 4 post. As to the Secretary of State see para 2 ante.

12 He under the British Nationality (No 2) Act 1964 s 1 (now repealed): see para 19 ante. Under this provision a person who had always been stateless was entitled to registration if: (1) his mother was a citizen of the United Kingdom and colonies at the time of his birth; or (2) the place where he was born was at the time of his application for registration part of the United Kingdom and colonies; or (3) he satisfied conditions as to parentage, or as to residence and parentage: see s 1, Schedule (now repealed). Those satisfying the condition in head (1) or head (3) supra were citizens by descent only: s 1(4) (now repealed). As to citizenship by descent see para 55 post.

13 See the British Nationality Act 1981 s 23(2) (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)).

14 He under the British Nationality Act 1948 s 12(6) (now repealed): see para 19 ante. Under this provision a person who would have become a citizen of the United Kingdom and colonies on 1 January 1949 but for his citizenship or potential citizenship of a Commonwealth country (see paras 17-18 ante), could be registered (together with his minor children) if: (1) he was descended in the male line from an ancestor who was born or naturalised in the United Kingdom and colonies or became a British subject by annexation of territory; (2) he intended to make his ordinary place of residence within the United Kingdom and colonies; and (3) the Secretary of State thought it fitting that he should become a citizen by reason of his close connection with the United Kingdom and colonies: see s 12(6) (now repealed).

15 As to the conditions see *ibid* s 12(1) (now repealed); and para 17 head (1) ante. See also note 14 head (1) supra.

16 See the British Nationality Act 1981 s 23(3) (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)).

17 He under the British Nationality Act 1964 s 1 (now repealed): see para 21 ante. Those who could resume citizenship under this provision were those who renounced citizenship in order to acquire or retain citizenship of a Commonwealth country which did not permit dual citizenship, and who (or, in the case of a woman, whose husband) had a qualifying connection with the United Kingdom and colonies: see s 1 (now repealed); and para 21 ante.

18 For these purposes, a person had an appropriate qualifying connection if he, his father or his father's father was born, naturalised or registered as a citizen of the United Kingdom and colonies in a British overseas territory, or became a British subject by annexation of any territory included in a British overseas territory: see the British Nationality Act 1981 s 23(5) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). For these purposes, the qualifying connections specified in the British Nationality Act 1964 are now irrelevant: see *R v Secretary of State for the Home Department, ex p Patel and Wahid* [1991] Imm AR 25, DC.

19 See the British Nationality Act 1981 s 23(4) (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)).

20 Eg certain Falkland Islanders who became British overseas territories citizens under the British Nationality Act 1981 s 23 (as amended) became at the same time British citizens under the British Nationality (Falkland Islands) Act 1983 s 1 (as amended): see para 24 ante.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP/46. Automatic acquisition on 21 May 2002.

46. Automatic acquisition on 21 May 2002.

A person who:

- 93 (1) was born on or after 26 April 1969 and before 1 January 1983¹;
- 94 (2) was born to a woman who at the time was a citizen of the United Kingdom and colonies² by virtue of her birth in the British Indian Ocean Territory³; and
- 95 (3) immediately before 21 May 2002⁴ was not a British overseas territories citizen⁵,

became a British overseas territories citizen on 21 May 2002⁶.

- 1 See the British Overseas Territories Act 2002 s 6(1)(a), (3)(a).
- 2 As to citizenship of the United Kingdom and colonies see paras 16-21 ante.
- 3 See the British Overseas Territories Act 2002 s 6(1)(b), (3)(a).
- 4 I.e. the date of the commencement of *ibid* s 6: see s 8; and the British Overseas Territories Act 2002 (Commencement) Order 2002, SI 2002/1252, art 2(b).
- 5 See the British Overseas Territories Act 2002 s 6(3)(b). British overseas territories citizens were formerly known as British dependent territories citizens: see paras 8, 44 ante.
- 6 *Ibid* s 6(3). A person who is a British overseas territories citizen by virtue of s 6(3) is a British overseas territories citizen by descent for the purposes of the British Nationality Act 1981: British Overseas Territories Act 2002 s 6(4). As to citizenship by descent see para 55 post.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP/47. Acquisition by birth, adoption, etc.

47. Acquisition by birth, adoption, etc.

A person born in a British overseas territory¹ on or after 1 January 1983² is a British overseas territories citizen³ if at the time of the birth his father or mother⁴ is a British overseas territories citizen or is settled in a British overseas territory⁵. There is a rebuttable presumption that a new-born infant found abandoned in a British overseas territory fulfils these qualifications⁶.

A person born in the United Kingdom⁷ on or after 1 January 1983 who would otherwise be stateless is a British overseas territories citizen if at the time of the birth his father or mother is a British overseas territories citizen⁸.

Where on or after 1 January 1983 an order authorising the adoption of a minor is made by a court in a British overseas territory, he is a British overseas territories citizen (if he is not already) from the date of the order provided the adopter (or, in the case of a joint adoption, one of the adopters) is a British overseas territories citizen on that date⁹; and he remains a British overseas territories citizen even if the order ceases to have effect¹⁰.

A person born outside the British overseas territories on or after 1 January 1983 is a British overseas territories citizen if at the time of the birth his father or mother is a British overseas territories citizen: (1) otherwise than by descent¹¹; or (2) serving outside the British overseas territories, as a result of recruitment in a British overseas territory, in Crown service under the government of a British overseas territory or in service designated¹² by the Secretary of State as closely associated with the activities outside the British overseas territories of the government of any British overseas territory¹³.

- 1 See para 26 note 1 ante. As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.
- 2 I.e. the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.
- 3 British overseas territories citizens were formerly known as British dependent territories citizens: see paras 8, 44 ante. Since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship: see the British Overseas Territories Act 2002 s 3; and para 25 ante.
- 4 See para 26 notes 6, 7 ante.

5 British Nationality Act 1981 s 15(1) (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). This is so even if the father's or mother's connection is with a British overseas territory other than that where the person is born. As to when a person is settled in a British overseas territory see para 26 note 9 ante.

6 See the British Nationality Act 1981 s 15(2) (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)).

7 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

8 See the British Nationality Act 1981 s 36, Sch 2 para 1 (amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b)).

9 See the British Nationality Act 1981 s 15(5) (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)).

10 See the British Nationality Act 1981 s 15(6) (amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b)).

11 As to citizenship by descent see para 55 post.

12 I.e. by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: see the British Nationality Act 1981 s 16 (as amended: see note 13 infra); and the British Dependent Territories Citizenship (Designated Service) Order 1982, SI 1982/1710 (amended by virtue of the British Overseas Territories Act 2002 ss 1(2), 2(3)).

13 See the British Nationality Act 1981 s 16 (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). A person who acquires citizenship under the British Nationality Act 1981 s 16(1)(a) (as amended) (see head (1) in the text) is a British overseas territories citizen by descent but a person who acquires citizenship as a result of s 16(1)(b) (as amended) (see head (2) in the text) is not: see s 25(1)(a) (as amended); and para 55 post.

UPDATE

47 Acquisition by birth, adoption, etc

NOTE 12--SI 1982/1710 further amended: SI 2008/1240.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP/48. Acquisition by registration: birth in a British overseas territory.

48. Acquisition by registration: birth in a British overseas territory.

A person born in a British overseas territory¹ on or after 1 January 1983² who is not a British overseas territories citizen³ by birth⁴ is entitled to be registered as a British overseas territories citizen if: (1) an application⁵ is made while he is a minor⁶ on the ground that his father or mother has become a British overseas territories citizen or has settled in a British overseas territory⁷; or (2) an application is made at any time after he attains the age of ten years⁸ on the ground that during each of the first ten years of his life he has not been absent from the British overseas territory in which he was born for more than 90 days⁹.

1 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.

2 I.e. the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

3 British overseas territories citizens were formerly known as British dependent territories citizens: see paras 8, 44 ante. Since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship: see the British Overseas Territories Act 2002 s 3; and para 25 ante.

4 lie under the British Nationality Act 1981 s 15(1), (2) (as amended): see para 47 ante.

5 As to applications see para 79 post.

6 For the meaning of 'minor' see para 26 note 11 ante.

7 See the British Nationality Act 1981 s 15(3) (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). As to when a person is settled in a British overseas territory see para 26 note 9 ante.

8 For the purposes of the British Nationality Act 1981, a person attains any particular age at the beginning of the relevant anniversary of the date of his birth: s 50(11)(b).

9 Ibid s 15(4) (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). See also the British Nationality Act 1981 s 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the person to whom the application relates as fulfilling the requirements specified in the British Nationality Act 1981 s 15(4) (as amended) although the number of days on which he was absent from the British overseas territory in which he was born exceeds the number mentioned: see s 15(7) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to the Secretary of State see para 2 ante. As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante.

UPDATE

48 Acquisition by registration: birth in a British overseas territory

TEXT AND NOTES 7, 9--An application for registration of an adult or young person as a British overseas territories citizen under the 1981 Act s 15(3), (4) must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character: British Nationality Act 1981 s 41A(2) (s 41A(2), (5) added by Borders, Citizenship and Immigration Act 2009 s 47(1) to replace corresponding provision in Immigration, Asylum and Nationality Act 2006 s 58). 'Adult or young person' means a person who has attained the age of ten at the time when the application is made: British Nationality Act 1981 s 41A(5).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP/49. Acquisition by registration: minors.

49. Acquisition by registration: minors.

The Secretary of State¹ may, if he thinks fit², grant any application³ for registration of a minor⁴ as a British overseas territories citizen⁵.

A person born outside the British overseas territories⁶ is entitled⁷, on an application made within 12 months⁸ from his birth, to be registered as a British overseas territories citizen if: (1) one of his parents was a British overseas territories citizen by descent⁹ at the time of the birth¹⁰; (2) the father or mother of that parent was a British overseas territories citizen otherwise than by descent at the time of the birth of that parent, or became a British overseas territories citizen otherwise than by descent on 1 January 1983¹¹ or would have done so but for his or her death; and (3) that parent had been in a British overseas territory at the beginning of any three year period ending not later than the date of the birth and had not been absent from that territory for more than 270 days during that period¹².

A person born outside the British overseas territories is entitled, on an application made while he is a minor, to be registered as a British overseas territories citizen if: (a) at the time of his birth his father or mother was a British overseas territories citizen by descent; (b) that person

and his father and mother were in one and the same overseas territory (no matter which) at the beginning of the period of three years ending with the date of the application and none of them has been absent from that territory for more than 270 days during that period; and (c) his father and mother consent to the registration in the prescribed manner¹³.

1 As to the Secretary of State see para 2 ante.

2 As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante.

3 As to applications see para 79 post.

4 For the meaning of 'minor' see para 26 note 11 ante.

5 See the British Nationality Act 1981 s 17(1) (amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b)). British overseas territories citizens were formerly known as British dependent territories citizens: see paras 8, 44 ante. Since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship: see the British Overseas Territories Act 2002 s 3; and para 25 ante.

A person registered under the British Nationality Act 1981 s 17(1) (as amended) is a British overseas territories citizen by descent if at the time of his birth his father or mother was a British overseas territories citizen, or was at that time a citizen of the United Kingdom and colonies and became a British overseas territories citizen on 1 January 1983 or would have done so but for his or her death: s 25(1)(c) (as amended); and see para 55 post. As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

6 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.

7 Ie subject to overriding considerations of public policy, where the qualifying conditions are fulfilled by criminal activity: *R v Secretary of State for the Home Department, ex p Puttick* [1981] QB 767, [1981] 1 All ER 776, DC (married status on which entitlement depended was valid but obtained by perjury and forgery).

8 If in the special circumstances of any particular case he thinks fit, the Secretary of State may treat the reference to 12 months as a reference to 6 years: British Nationality Act 1981 s 17(4).

9 As to citizenship by descent see para 55 post.

10 See para 26 notes 6, 7 ante.

11 Ie the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

12 See the British Nationality Act 1981 s 17(2), (3) (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). See also the British Nationality Act 1981 s 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). A person born stateless need only satisfy heads (1) and (2) in the text. As to registration of stateless persons see also para 50 post. A person registered under the British Nationality Act 1981 s 17(2) (as amended) is a British overseas territories citizen by descent: see s 25(1)(a) (as amended); and para 55 post.

13 See *ibid* s 17(5) (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). See also the British Nationality Act 1981 s 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to the manner of signifying parental consent to registration see the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, reg 15 (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). As to the power to make regulations see para 6 ante.

If the person's father or mother died, or their marriage was terminated, on or before the date of the application, or his father and mother were legally separated on that date, the references to his father and mother in head (b) in the text are to be read either as references to his father or as references to his mother; if his father or mother died on or before that date, the reference to his father and mother in head (c) in the text is to be read as a reference to either of them; and if he was born illegitimate, all those references are to be read as references to his mother: British Nationality Act 1981 s 17(6) (amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b)).

UPDATE

49 Acquisition by registration: minors

TEXT AND NOTES 1, 13--An application for registration of an adult or young person as a British overseas territories citizen under the 1981 Act s 17(1), (5) must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character: British Nationality Act 1981 s 41A(2) (s 41A(2), (5) added by Borders, Citizenship and Immigration Act 2009 s 47(1) to replace corresponding provision in Immigration, Asylum and Nationality Act 2006 s 58). 'Adult or young person' means a person who has attained the age of ten at the time when the application is made: British Nationality Act 1981 s 41A(5).

NOTE 13--British Nationality Act 1981 s 17(6) further amended: Civil Partnership Act 2004 Sch 27 para 75. SI 1982/987 reg 15 now British Nationality (British Overseas Territories) Regulations 2007, 2007/3139, reg 11.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP/50. Acquisition by registration: statelessness.

50. Acquisition by registration: statelessness.

A person born in the United Kingdom or a British overseas territory¹ on or after 1 January 1983², who is and always has been stateless³, is entitled to be registered as a British overseas territories citizen if: (1) an application for his registration is made when he is over ten and under 22 years old⁴; (2) he was in the United Kingdom or a British overseas territory at the beginning of the period of five years ending with the date of application; (3) during that period he has not been absent from both the United Kingdom and the British overseas territories for more than 450 days; and (4) during that period he has spent more days (or part days) in the British overseas territories than in the United Kingdom⁵.

A person born outside the United Kingdom and the British overseas territories on or after 1 January 1983, who is and always has been stateless, is entitled on application to registration as a British overseas territories citizen if: (a) at the time of his birth his father or mother⁶ was a British overseas territories citizen; (b) he himself was in the United Kingdom or a British overseas territory at the beginning of the period of three years ending with the date of application; and (c) during that period he has not been absent from both the United Kingdom and the British overseas territories for more than 270 days⁷.

Provision is made for the registration of certain stateless persons born before 1 January 1983⁸.

1 See para 26 note 1 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante. As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.

2 Ie the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

3 A person born in a British overseas territory to a British citizen parent is automatically a British citizen if he would otherwise be stateless; and a person born in the United Kingdom to a British overseas territories citizen parent is automatically a British overseas territories citizen if he would otherwise be stateless: see paras 26, 47 ante. As to British citizens and citizenship see paras 8, 23-43 ante.

British overseas territories citizens were formerly known as British dependent territories citizens: see paras 8, 44 ante. Since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship: see the British Overseas Territories Act 2002 s 3; and para 25 ante.

4 As to applications see para 79 post. For the purposes of the British Nationality Act 1981, a person attains any particular age at the beginning of the relevant anniversary of the date of his birth: s 50(11)(b).

5 Ibid s 36, Sch 2 para 3(1), (2)(b) (Sch 2 para 3 amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). See also the British Nationality Act 1981 s 50(10)(b) (amended by virtue of the British Overseas

Territories Act 2002 s 1(1)(b)). If he spent more days or part days in the United Kingdom than in the British overseas territories he will be registered as a British citizen: see the British Nationality Act 1981 Sch 2 para 3(2) (a) (as amended); and para 35 ante.

If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the person as fulfilling the requirements of head (3) in the text although the number of days on which he was absent from both the United Kingdom and the British overseas territories exceeds the number mentioned: see Sch 2 para 6 (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to the Secretary of State see para 2 ante. As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante.

6 See para 26 notes 6, 7 ante.

7 See the British Nationality Act 1981 Sch 2 para 4 (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). See also the British Nationality Act 1981 s 50(10)(b) (as amended: see note 5 supra). As to the registration of stateless persons see also paras 35 ante, 60, 70 post. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the person as fulfilling the requirements of head (c) in the text although the number of days on which he was absent from both the United Kingdom and the British overseas territories exceeds the number mentioned: see Sch 2 para 6 (as amended: see note 5 supra).

8 See *ibid* Sch 2 para 5.

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/2. British Nationality/(4) British Overseas Territories Citizenship/51. Acquisition by registration: special cases.

51. Acquisition by registration: special cases.

A number of statutory provisions extended certain entitlements to registration under the previous nationality law for limited periods to enable those satisfying the conditions to register as British overseas territories citizens¹, but the periods during which applications for such registration could be made have now expired².

Those provisions dealt with: (1) registration of certain Commonwealth or Irish citizens who had been ordinarily resident in a British overseas territory for a minimum of five years (and in some cases Crown service, or other relevant service, was treated as ordinary residence in the United Kingdom)³; (2) registration of a woman on the basis of marriage⁴; (3) registration of a person born in a foreign country⁵ before 1 January 1988 whose father was (or but for his death would have been) a British overseas territories citizen by descent⁶.

1 British overseas territories citizens and citizenship were formerly known as British dependent territories citizens and citizenship: see paras 8, 44 ante. Since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship: see the British Overseas Territories Act 2002 s 3; and para 25 ante.

2 See the British Nationality Act 1981 ss 19-21. For analogous provisions relating to British citizenship see para 36 ante. Broadly, those who satisfied the conditions in a manner connected with the United Kingdom were able to register as British citizens, while those who satisfied the conditions in a manner connected with a British overseas territory were able to register as British overseas territories citizens. As to British citizens and citizenship see paras 8, 23-43 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante. As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.

3 See *ibid* s 19.

4 See *ibid* s 20. Some persons so registered became British overseas territories citizens by descent: see s 25(1)(f) (as amended); and para 55 post.

5 For the meaning of 'foreign country' see para 6 note 15 ante.

6 See the British Nationality Act 1981 s 21. A person so registered became a British overseas territories citizen by descent: see s 25(1)(a) (as amended); and para 55 post.

UPDATE**51 Acquisition by registration: special cases**

TEXT AND NOTES--1981 Act ss 19-21 repealed: Nationality, Immigration and Asylum Act 2002 s 15, Sch 2 para 1.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP/52. Acquisition by naturalisation: general.

52. Acquisition by naturalisation: general.

British overseas territories citizenship¹ is the only form of British nationality, apart from British citizenship², which can be acquired by naturalisation. In order to be eligible for naturalisation as a British overseas territories citizen, a person must fulfil prescribed requirements³ but, even when these requirements are fulfilled, the grant of a certificate of naturalisation is at the discretion of the Secretary of State⁴. The requirements for naturalisation are different in some respects for an applicant who is married to a British overseas territories citizen⁵, or who is serving outside the relevant territory⁶ in Crown service under the government of that territory or married to a British overseas territories citizen in such service⁷. The standard requirements of general application are that:

- 96 (1) the applicant is of full age and capacity⁸, and is of good character⁹;
- 97 (2) the applicant was in the relevant territory at the beginning of the period of five years ending with the date of the application¹⁰;
- 98 (3) the applicant was not absent from the relevant territory for more than 450 days during that five year period¹¹;
- 99 (4) the applicant was not absent from the relevant territory for more than 90 days during the 12 months preceding the application¹²;
- 100 (5) the applicant was not at any time during the 12 months preceding the application subject under the immigration laws¹³ to any restriction on the period for which he might remain in the relevant territory¹⁴;
- 101 (6) the applicant was not, at any time in the period of five years preceding the application, in the relevant territory in breach of the immigration laws¹⁵;
- 102 (7) the applicant has a sufficient knowledge of the English language or any other language recognised for official purposes in the relevant territory¹⁶;
- 103 (8) the applicant intends, if granted naturalisation, either to make his home or principal home in the relevant territory, or to enter or continue in Crown service under the government of that territory, or service under an international organisation of which that territory or its government is a member, or service in the employment of a company or association established in that territory¹⁷.

For the purposes of the residence requirements, a person is to be treated as having been absent from any particular British overseas territory during any of the following periods, even though he is physically present there¹⁸:

- 104 (a) any period when he was entitled, or was part of the family and household of a person entitled, to exemption from immigration control by reason of diplomatic immunity¹⁹ or as a member of the forces²⁰;

105 (b) any period when he was: (i) detained in pursuance of a sentence passed on him by a court in that territory or elsewhere for any offence²¹, or under a direction²² corresponding to a hospital order²³ and made in connection with his conviction of an offence²⁴, or under any power of detention conferred by the immigration laws of that territory²⁵; or (ii) unlawfully at large or absent without leave from any such detention²⁶ and in consequence liable to be arrested or taken into custody²⁷.

1 British overseas territories citizens and citizenship were formerly known as British dependent territories citizens and citizenship: see paras 8, 44 ante. Since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship: see the British Overseas Territories Act 2002 s 3; and para 25 ante.

2 As to the acquisition of British citizenship by naturalisation see paras 37-39 ante.

3 See the British Nationality Act 1981 s 18, Sch 1 (as amended); and the text and notes 8-27 infra. It seems that the Secretary of State is entitled on grounds of public policy to decline to accept that a condition is satisfied where this has been achieved by means of criminal activity: *R v Secretary of State for the Home Department, ex p Puttick* [1981] QB 767, [1981] 1 All ER 776, DC (married status on which entitlement depended was valid but obtained by perjury and forgery). As to the Secretary of State see para 2 ante. As to applications see para 79 post.

4 See the British Nationality Act 1981 s 18 (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante. See also para 37 note 8 ante.

5 See para 53 post.

6 Every application under the British Nationality Act 1981 s 18 (as amended) must specify the British overseas territory which is to be treated as the relevant territory for the purposes of that application: see s 18(3) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). Although British overseas territories citizenship is a common status for all British overseas territories, all the conditions for naturalisation must be satisfied in respect of the same territory; one cannot, for example, satisfy the residence condition by residence in different territories, or satisfy the past residence condition in one territory while intending to make one's permanent home in a different territory. As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.

7 See para 54 post.

8 A person is of full age if he has attained the age of 18 years, and is of full capacity if he is not of unsound mind: British Nationality Act 1981 s 50(11).

9 See *ibid* s 18(1), Sch 1 para 5(1)(b) (s 18(1), Sch 1 para 5(1) amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b)).

10 British Nationality Act 1981 Sch 1 para 5(1)(a), (2)(a) (Sch 1 para 5(1) as amended: see note 9 supra). As to when a person is deemed to be absent see the text and notes 18-27 infra. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant as having been in the relevant territory for the whole or any part of any period during which he would otherwise be deemed to have been absent: Sch 1 para 6(b).

11 *Ibid* Sch 1 para 5(1)(a), (2)(a) (Sch 1 para 5(1) as amended: see note 9 supra). See also s 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to when a person is deemed to be absent see the text and notes 18-27 infra. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant: (1) as fulfilling the requirement specified in the British Nationality Act 1981 Sch 1 para 5(2)(a), although the number of days on which he was absent from the relevant territory exceeds the number mentioned; (2) as having been in the relevant territory for the whole or any part of any period during which he would otherwise be deemed to have been absent: Sch 1 para 6(a), (b).

12 *Ibid* Sch 1 para 5(1)(a), (2)(b) (Sch 1 para 5(1) as amended: see note 9 supra). See also s 50(10)(b) (as amended: see note 11 supra). As to when a person is deemed to be absent see the text and notes 18-27 infra. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant: (1) as fulfilling the requirement specified in Sch 1 para 5(2)(b), although the number of days on which he was absent from the relevant territory exceeds the number mentioned; (2) as having been in the relevant territory for the whole or any part of any period during which he would otherwise be deemed to have been absent: Sch 1 para 6(a), (b).

13 For the meaning of 'immigration laws' see para 26 note 9 ante.

14 British Nationality Act 1981 Sch 1 para 5(1)(a), (2)(c) (Sch 1 para 5(1) as amended: see note 9 supra). If in the special circumstances of any particular case the Secretary of State thinks fit, he may disregard any such restriction as is mentioned in Sch 1 para 5(2)(c), not being a restriction to which the applicant was subject on the date of the application: Sch 1 para 6(c).

15 Ibid Sch 1 para 5(1)(a), (2)(d) (Sch 1 para 5(1) as amended: see note 9 supra). If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant as fulfilling the requirement specified in Sch 1 para 5(2)(d) although he was in the relevant territory in breach of the immigration laws during the period mentioned: Sch 1 para 6(d).

16 Ibid Sch 1 para 5(1)(c) (Sch 1 para 5(1) as amended: see note 9 supra). If in the special circumstances of any particular case the Secretary of State thinks fit, he may waive the need to fulfil the requirement specified in Sch 1 para 5(1)(c) (as amended) if he considers that because of the applicant's age or physical or mental condition it would be unreasonable to expect him to fulfil it: Sch 1 para 6(e).

17 Ibid Sch 1 para 5(1)(d) (Sch 1 para 5(1) as amended: see note 9 supra).

18 Ibid Sch 1 para 9(2) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). This is subject to the British Nationality Act 1981 Sch 1 para 6(b): see notes 10-12 supra.

19 The exemption referred to in the text is an exemption arising under the Immigration Act 1971 s 8(3) (as amended): see para 88 post.

20 See the British Nationality Act 1981 Sch 1 para 9(2)(a) (Sch 1 para 9(2) as amended: see note 18 supra). The exemption referred to in the text is an exemption arising under the Immigration Act 1971 s 8(4) (as amended): see para 89 post.

21 See the British Nationality Act 1981 Sch 1 para 9(2)(b)(i) (Sch 1 para 9(2) as amended: see note 18 supra).

22 Ie a direction (however described) made under any law for purposes similar to the Mental Health Act 1983 Pt III (ss 35-55) (as amended) (see MENTAL HEALTH vol 30(2) (Reissue) para 486 et seq) which was for the time being in force in the relevant territory.

23 Ie a hospital order made under ibid Pt III (as amended): see MENTAL HEALTH vol 30(2) (Reissue) para 486 et seq.

24 See the British Nationality Act 1981 Sch 1 para 9(2)(b)(ii) (Sch 1 para 9(2) as amended (see note 18 supra); and Sch 1 para 9(2)(b)(ii) amended by the Mental Health Act 1983 s 148, Sch 4 para 60).

25 See the British Nationality Act 1981 Sch 1 para 9(2)(b)(iii) (Sch 1 para 9(2) as amended: see note 18 supra).

26 Ie when he was liable to detention as mentioned in ibid Sch 1 para 9(2)(b)(i) or Sch 1 para 9(2)(b)(ii) (as amended) (see the text and notes 21-24 supra) or when his actual detention under any such power as is mentioned in Sch 1 para 9(2)(b)(iii) (see the text and note 25 supra) was required or specifically authorised.

27 See ibid Sch 1 para 9(2)(c), (d) (Sch 1 para 9(2) as amended: see note 18 supra).

UPDATE

52 Acquisition by naturalisation: general

TEXT AND NOTE 8--Where a provision of British Nationality Act 1981 requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant's best interests: s 44A (added by Immigration, Asylum and Nationality Act 2006 s 49).

NOTE 15--For the construction of a reference to being in the United Kingdom 'in breach of the immigration laws' see British Nationality Act 1981 s 50A; and PARA 26.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP/53. Acquisition by naturalisation: spouses of British overseas territories citizens.

53. Acquisition by naturalisation: spouses of British overseas territories citizens.

An applicant who, on the date of the application¹, is married to a British overseas territories citizen² is eligible for naturalisation as a British overseas territories citizen, and may be granted a certificate of naturalisation by the Secretary of State³ if the following requirements are fulfilled⁴:

- 106 (1) the applicant is of full age and capacity⁵, and is of good character⁶;
- 107 (2) the applicant was in the relevant territory⁷ at the beginning of the period of three years ending with the date of the application⁸;
- 108 (3) the applicant was not absent from the relevant territory for more than 270 days during that three year period⁹;
- 109 (4) the applicant was not absent from the relevant territory for more than 90 days in the 12 months preceding the application¹⁰;
- 110 (5) on the date of the application the applicant was not subject under the immigration laws¹¹ to any restriction on the period for which he might remain in the relevant territory¹²;
- 111 (6) the applicant was not, at any time in the period of three years preceding the application, in the relevant territory in breach of the immigration laws¹³.

1 As to applications see para 79 post.

2 British overseas territories citizens were formerly known as British dependent territories citizens: see paras 8, 44 ante. Since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship: see the British Overseas Territories Act 2002 s 3; and para 25 ante.

As to applicants married to British overseas territories citizens who are in Crown service outside the relevant British overseas territory see para 54 post. As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante. As to the relevant territory see para 52 note 6 ante.

3 As to the Secretary of State see para 2 ante. As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante.

4 See *ibid* s 18(2), Sch 1 paras 7, 8 (s 18(2), Sch 1 para 7 amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b); and the British Nationality Act 1981 Sch 1 para 8 amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)).

5 British Nationality Act 1981 s 18(2) (as amended: see note 4 supra). A person is of full age if he has attained the age of 18 years, and is of full capacity if he is not of unsound mind: s 50(11).

6 *Ibid* Sch 1 para 7(e) (as amended: see note 4 supra), applying Sch 1 para 5(1)(b) (amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b)).

7 See para 52 note 6 ante.

8 British Nationality Act 1981 Sch 1 para 7(a) (as amended: see note 4 supra). As to when a person is deemed to be absent from the relevant territory see para 52 ante. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant as having been in the relevant territory for the whole or any part of any period during which he would otherwise be deemed to have been absent: Sch 1 paras 6(b), 8 (as amended: see note 4 supra). The Secretary of State may waive the need to fulfil all or any of the requirements specified in Sch 1 para 7(a) (as amended) if on the date of the application the person to whom the applicant is married is serving in service to which s 16(1)(b) (as amended) (see para 47 head (2) ante) applies, that person's recruitment for that service having taken place in a British overseas territory: see Sch 1 paras 6(f), 8 (as so amended); and para 54 post.

9 *Ibid* Sch 1 para 7(a) (as amended: see note 4 supra). See also s 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to when a person is deemed to be absent from the relevant territory

see para 52 ante. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant: (1) as fulfilling the requirement specified in the British Nationality Act 1981 Sch 1 para 7(a), although the number of days on which he was absent from the relevant territory exceeds the number mentioned; (2) as having been in the relevant territory for the whole or any part of any period during which he would otherwise be deemed to have been absent: Sch 1 paras 6(a), (b), 8 (as amended: see note 4 supra). The Secretary of State may waive the need to fulfil all or any of the requirements specified in Sch 1 para 7(a) (as amended) if on the date of the application the person to whom the applicant is married is serving in service to which s 16(1)(b) (as amended) (see para 47 head (2) ante) applies, that person's recruitment for that service having taken place in a British overseas territory: see Sch 1 paras 6(f), 8 (as so amended); and para 54 post.

10 Ibid Sch 1 para 7(b) (as amended: see note 4 supra). See also s 50(10)(b) (as amended: see note 9 supra). As to when a person is deemed to be absent from the relevant territory see para 52 ante. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant: (1) as fulfilling the requirement specified in Sch 1 para 7(b), although the number of days on which he was absent from the relevant territory exceeds the number mentioned; (2) as having been in the relevant territory for the whole or any part of any period during which he would otherwise be deemed to have been absent: Sch 1 paras 6(a), (b), 8 (as amended: see note 4 supra). The Secretary of State may waive the need to fulfil all or any of the requirements specified in Sch 1 para 7(b) (as amended) if on the date of the application the person to whom the applicant is married is serving in service to which s 16(1)(b) (as amended) (see para 47 head (2) ante) applies, that person's recruitment for that service having taken place in a British overseas territory: see Sch 1 paras 6(f), 8 (as so amended); and para 54 post.

11 For the meaning of 'immigration laws' see para 26 note 9 ante.

12 British Nationality Act 1981 Sch 1 para 7(c) (as amended: see note 4 supra). See further para 39 note 13 ante.

13 Ibid Sch 1 para 7(d) (as amended: see note 4 supra). If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the applicant as fulfilling the requirement specified in Sch 1 para 7(d) although he was in the relevant territory in breach of the immigration laws during the period mentioned: Sch 1 paras 6(d), 8 (as amended: see note 4 supra).

UPDATE

53 Acquisition by naturalisation: spouses of British overseas territories citizens

TEXT AND NOTES 4, 5--British Nationality Act 1981 s 18(2) further amended: Civil Partnership Act 2004 Sch 27 para 76.

TEXT AND NOTE 5--Where a provision of the British Nationality Act 1981 requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant's best interests: s 44A (added by Immigration, Asylum and Nationality Act 2006 s 49).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP/54. Acquisition by naturalisation: Crown service overseas.

54. Acquisition by naturalisation: Crown service overseas.

A person in Crown service overseas may be eligible for naturalisation as a British overseas territories citizen¹ without satisfying residence conditions², and those conditions may be waived in the case of the spouse of such a person³.

An applicant who, on the date of the application⁴, is serving outside the territory specified in the application as the relevant British overseas territory⁵ in Crown service under the government of that territory⁶ may be granted a certificate of naturalisation by the Secretary of State⁷ if the following requirements are fulfilled⁸:

- 112 (1) the applicant is of full age and capacity⁹, and is of good character¹⁰;
- 113 (2) the applicant has a sufficient knowledge of the English language or any other language recognised for official purposes in the relevant territory¹¹;
- 114 (3) the applicant intends, if granted naturalisation, to make his home or principal home in the relevant territory, or to continue in Crown service under the government of that territory, or to enter or continue in service under an international organisation of which that territory or its government is a member, or to enter or continue in service in the employment of a company or association established in that territory¹².

An applicant whose spouse is a British overseas territories citizen serving outside the British overseas territories, as a result of recruitment in a British overseas territory, in Crown service under the government of a British overseas territory, or in service designated as closely associated with government activities¹³, must satisfy the naturalisation conditions for spouses of British overseas territories citizens¹⁴, save that (in addition to the discretion to waive or relax certain requirements in all such cases) the Secretary of State has a discretion to waive the need to fulfil all or any of the residence requirements¹⁵.

1 British overseas territories citizens were formerly known as British dependent territories citizens: see paras 8, 44 ante. Since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship: see the British Overseas Territories Act 2002 s 3; and para 25 ante.

2 As to the alternative requirement see the text and note 6 infra.

3 See the text and notes 13-15 infra.

4 As to applications see para 79 post.

5 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante. As to the relevant territory see para 52 note 6 ante.

6 See the British Nationality Act 1981 s 18(1), Sch 1 para 5(1)(a), (3) (s 18(1), Sch 1 para 5(1) amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b)).

7 As to the Secretary of State see para 2 ante. As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante.

8 See *ibid* s 18(1), Sch 1 para 5 (as amended: see note 6 supra).

9 A person is of full age if he has attained the age of 18 years, and is of full capacity if he is not of unsound mind: *ibid* s 50(11).

10 See *ibid* s 18(1), Sch 1 para 5(1)(b) (as amended: see note 6 supra).

11 *Ibid* Sch 1 para 5(1)(c) (as amended: see note 6 supra). If in the special circumstances of any particular case the Secretary of State thinks fit, he may waive the need to fulfil the requirement specified in Sch 1 para 5(1)(c) (as amended) if he considers that because of the applicant's age or physical or mental condition it would be unreasonable to expect him to fulfil it: Sch 1 para 6(e).

12 *Ibid* Sch 1 para 5(1)(d) (as amended: see note 6 supra).

13 I.e. the spouse must be serving in service to which *ibid* s 16(1)(b) (as amended) applies: see para 47 head (2) ante.

14 See para 53 ante.

15 See the British Nationality Act 1981 s 18(2), Sch 1 paras 6(f), 7, 8(d) (s 18(2), Sch 1 para 7 amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b); and the British Nationality Act 1981 Sch 1 para 8 amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to the residence requirements which generally apply for an applicant who is the spouse of a British overseas territories citizen see the British Nationality Act 1981 Sch 1 para 7(a), (b); and para 53 heads (2)-(4) ante. See further para 39 note 13 ante.

UPDATE**54 Acquisition by naturalisation: Crown service overseas**

TEXT AND NOTE 9--Where a provision of the British Nationality Act 1981 requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant's best interests: s 44A (added by Immigration, Asylum and Nationality Act 2006 s 49).

NOTE 15--British Nationality Act 1981 s 18(2), Sch 1 para 8(d) further amended: Civil Partnership Act 2004 Sch 27 paras 76, 78.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP/55. Citizenship by descent.

55. Citizenship by descent.

As with British citizenship¹, a person who is a British overseas territories citizen² by descent does not as a general rule automatically pass that citizenship to his or her children³; and British overseas territories citizenship 'by descent' is a term of art, with an exhaustive statutory definition⁴. By statute, the following British overseas territories citizens are British overseas territories citizens by descent:

- 115 (1) a person born outside the British overseas territories⁵ on or after 1 January 1983⁶ who is a British overseas territories citizen by virtue only of his father or mother being at the time of the birth⁷ a British overseas territories citizen otherwise than by descent⁸;
- 116 (2) a person born outside the British overseas territories on or after 1 January 1983 who is registered as a British overseas territories citizen⁹, being the child of a British overseas territories citizen by descent one of whose parents was a British overseas territories citizen otherwise than by descent¹⁰;
- 117 (3) a person born outside the British overseas territories on or after 1 January 1983 who was registered as a British overseas territories citizen under the transitional provisions¹¹ for children born between 1 January 1983 and 31 December 1987 to certain male former citizens of the United Kingdom and colonies by descent¹²;
- 118 (4) a person born outside the British overseas territories before 1 January 1983 who was a citizen of the United Kingdom and colonies by descent¹³, and became a British overseas territories citizen on 1 January 1983¹⁴; but such a person is a British overseas territories citizen otherwise than by descent if his father was at the time of the birth serving outside the British overseas territories in a specified type of public service for which he was recruited in a British overseas territory¹⁵;
- 119 (5) a person born outside the British overseas territories before 1 January 1983 who became a British overseas territories citizen on 1 January 1983¹⁶ and immediately before that date was deemed under any provision of the British Nationality Acts 1948 to 1965¹⁷ to be a citizen of the United Kingdom and colonies by descent only, or would have been so deemed if male¹⁸; but such a person is a British overseas territories citizen otherwise than by descent if his father was at the time of the birth serving outside the British overseas territories in a specified type of public service for which he was recruited in a British overseas territory¹⁹;

- 120 (6) a person registered as a British overseas territories citizen under the provision for discretionary registration of minors²⁰ whose father or mother was at the time of his birth a British overseas territories citizen or (if the birth was before 1 January 1983) a citizen of the United Kingdom and colonies who became a British overseas territories citizen on 1 January 1983²¹ or would have done so but for his or her death²²;
- 121 (7) a person born outside the British overseas territories before 1 January 1983 who became a British overseas territories citizen on that date²³ by virtue of being a former citizen of the United Kingdom and colonies one of whose parents was such a citizen at the time of the birth, that parent having that citizenship by birth, naturalisation or registration in a British overseas territory or himself born to a parent who at the time of the birth so had that citizenship²⁴; but such a person is a British overseas territories citizen otherwise than by descent if his father was at the time of the birth serving outside the British overseas territories in a specified type of public service for which he was recruited in a British overseas territory²⁵;
- 122 (8) a woman who became a British overseas territories citizen on 1 January 1983²⁶ by virtue of marriage to a man who became a British overseas territories citizen by descent on 1 January 1983 under head (4), head (5) or head (7) above²⁷, or would have done so but for his death²⁸; but she is a British overseas territories citizen otherwise than by descent if her father was at the time of her birth serving outside the British overseas territories in a specified type of public service for which he was recruited in a British overseas territory²⁹;
- 123 (9) a woman born outside the British overseas territories before 1 January 1983 who became a British overseas territories citizen by registration³⁰ by virtue of marriage to a man who became a British overseas territories citizen by descent on 1 January 1983³¹, or would have done so but for his death or renunciation of citizenship of the United Kingdom and colonies³²; but she is a British overseas territories citizen otherwise than by descent if her father was at the time of her birth serving outside the British overseas territories in a specified type of public service for which he was recruited in a British overseas territory³³;
- 124 (10) a person registered as a British overseas territories citizen³⁴ following previous renunciation of citizenship of the United Kingdom and colonies³⁵ who would, had he not renounced it, have become a British overseas territories citizen by descent on 1 January 1983³⁶ under head (4), head (5), head (7) or head (8) above³⁷;
- 125 (11) a person who, having formerly been a British overseas territories citizen by descent, renounced and subsequently resumed his British overseas territories citizenship³⁸ by registration³⁹;
- 126 (12) a person born in the United Kingdom⁴⁰ after 1 January 1983 who is a British overseas territories citizen by virtue of provisions contained in the British Nationality Act 1981⁴¹ for reducing statelessness⁴²;
- 127 (13) a person born on or after 26 April 1969 and before 1 January 1983 whose mother was at the time a citizen of the United Kingdom and colonies by virtue of her birth in the British Indian Ocean Territory and who, not having previously been a British overseas territories citizen, became such a citizen⁴³ with effect from 21 May 2002 by virtue of the British Overseas Territories Act 2002⁴⁴.

1 As to British citizens and citizenship see paras 8, 23-43 ante. As to British citizenship by descent see para 40 ante.

2 British overseas territories citizens and citizenship were formerly known as British dependent territories citizens and citizenship: see paras 8, 44 ante. Since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship: see the British Overseas Territories Act 2002 s 3; and para 25 ante.

- 3 le unless the parent is in government service abroad: see the British Nationality Act 1981 s 16(1)-(3) (as amended); and para 47 ante.
- 4 See the text and notes 5-44 *infra*. See also para 40 note 2 ante.
- 5 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.
- 6 le the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.
- 7 See para 26 notes 6, 7 ante.
- 8 See the British Nationality Act 1981 s 25(1)(a) (s 25(1) amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). See also the British Nationality Act 1981 s 16(1)(a) (as amended); and para 47 ante. A child born outside the British overseas territories to a British overseas territories citizen in government service outside the British overseas territories is a British overseas territories citizen otherwise than by descent, even if the parent is a citizen by descent: see s 16(1)(b) (as amended), s 25(1)(a) (as so amended); and para 47 note 13 ante.
- 9 le under *ibid* s 17(2) (as amended): see para 49 ante.
- 10 See *ibid* s 25(1)(a) (as amended: see note 8 *supra*).
- 11 le under *ibid* s 21: see para 51 ante.
- 12 See *ibid* s 25(1)(a) (as amended: see note 8 *supra*). As to citizenship of the United Kingdom and colonies see paras 16-21 ante.
- 13 le by virtue of the British Nationality Act 1948 s 5 (now repealed), which conferred citizenship on a person whose father (but not mother) was a citizen otherwise than by descent: see para 19 ante.
- 14 See the British Nationality Act 1981 s 25(1)(b)(i) (as amended: see note 8 *supra*). As to those who became British overseas territories citizens on 1 January 1983 see para 45 ante.
- 15 See *ibid* s 25(2) (s 25(2) amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). The specified types of public service are: (1) Crown service under the government of a British overseas territory; (2) service designated under the British Nationality Act 1981 s 16 (as amended) (see para 47 ante) as being closely associated with the activities outside the British overseas territories of the government of any British overseas territory, for which he was recruited in a British overseas territory: see s 25(2) (as so amended), s 25(3) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). This excepting provision is necessary because under the British Nationality Act 1948 s 5 (now repealed) (see note 13 *supra*; and para 19 ante) children born outside the United Kingdom and colonies before 1 January 1983 of citizens by descent in Crown service were citizens by descent, whereas under the British Nationality Act 1981 such children born after 1 January 1983 are not citizens by descent: see ss 16(1), 25(1)(a) (both as amended); note 8 *supra*; and para 47 note 13 ante.
- 16 See note 14 *supra*; and para 45 ante.
- 17 As to the British Nationality Acts 1948 to 1965 see para 5 note 5 ante.
- 18 See the British Nationality Act 1981 s 25(1)(b)(ii) (as amended: see note 8 *supra*). Prior to the British Nationality Act 1981 women could not transmit citizenship to their children, so there was no need to deem their citizenship to be by descent only, since the purpose of such deeming was to prevent transmission. As to deemed descent see eg the British Nationality Act 1948 ss 12(8), 13, Sch 3 para 3 (all now repealed); the British Nationality (No 2) Act 1964 s 1(4) (now repealed); and para 19 note 6 ante.
- 19 See note 15 *supra*.
- 20 le the British Nationality Act 1981 s 17(1) (as amended): see para 49 ante.
- 21 See note 14 *supra*; and para 45 ante.
- 22 See the British Nationality Act 1981 s 25(1)(c) (as amended: see note 8 *supra*).
- 23 le by virtue of *ibid* s 23(1)(b) (as amended): see para 45 head (2) ante. See also para 45 note 9 ante.
- 24 *Ibid* s 25(1)(d) (as amended: see note 8 *supra*).
- 25 See note 15 *supra*.

- 26 Ie under *ibid* s 23(1)(c) (as amended): see para 45 ante.
- 27 Ie under *ibid* s 25(1)(b) (as amended) or s 25(1)(d) (as amended).
- 28 See *ibid* s 25(1)(e) (as amended: see note 8 *supra*).
- 29 See note 15 *supra*.
- 30 Ie under the British Nationality Act 1981 s 20 (as amended): see para 51 ante.
- 31 Ie under *ibid* s 25 (as amended). See also note 14 *supra*; and para 45 ante.
- 32 See *ibid* s 25(1)(f) (as amended: see note 8 *supra*). As to renunciation of citizenship of the United Kingdom and colonies see para 21 ante.
- 33 See note 15 *supra*.
- 34 Ie under the British Nationality Act 1981 s 22 (as amended), which provides for registration following renunciation of previous citizenship of certain persons with an appropriate qualifying connection with a British overseas territory: see para 56 post.
- 35 See para 21 ante.
- 36 See note 31 *supra*.
- 37 See the British Nationality Act 1981 s 25(1)(g) (as amended: see note 8 *supra*). The text refers to becoming a British overseas territories citizen by descent under s 25(1)(b) (as amended), s 25(1)(d) (as amended) or s 25(1)(e) (as amended). The provisions of s 25(1)(g) (as amended) ensure that the person who renounces and resumes citizenship will not be in a better position than if he had never renounced it.
- 38 Ie under *ibid* s 13 (as applied by s 24 (as amended)): see para 56 post.
- 39 See *ibid* s 25(1)(h) (as amended: see note 8 *supra*). The provisions of s 25(1)(h) (as amended) ensure that the person who renounces and resumes citizenship will not be in a better position than if he had never renounced it.
- 40 As to the meaning of 'United Kingdom' see para 5 note 1 ante.
- 41 Ie the British Nationality Act 1981 Sch 2 para 1 (as amended): see para 47 ante. As to other provisions for reducing statelessness see para 50 ante.
- 42 See *ibid* s 25(1)(i) (as amended: see note 8 *supra*).
- 43 Ie by virtue of the British Overseas Territories Act 2002 s 6(3): see para 46 ante.
- 44 See *ibid* s 6(4); and para 46 ante.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP/56. Renunciation and resumption.

56. Renunciation and resumption.

A British overseas territories citizen¹ of full age and capacity² may renounce his citizenship by declaration, upon registration of which he ceases to be a British overseas territories citizen³. However, the person must have or be about to acquire some other citizenship or nationality⁴. The Secretary of State⁵ must be satisfied on this point; and even if the declaration is registered, should the renouncer not acquire some such other citizenship within six months, the registration will be of no effect and he will remain a British overseas territories citizen⁶.

A person who has renounced British overseas territories citizenship⁷ is entitled, once only, to be registered as a British overseas territories citizen if he is of full capacity, and had to renounce his British overseas territories citizenship in order to retain or acquire some other citizenship or nationality⁸. In addition, the Secretary of State has a discretion⁹ to register any person of full capacity who renounced British overseas territories citizenship, whatever the reason for the renunciation¹⁰.

A person who under previous nationality law renounced citizenship of the United Kingdom and colonies¹¹, and who wishes to resume British nationality, may in certain circumstances do so by registration as a British overseas territories citizen. A person who renounced citizenship of the United Kingdom and colonies is entitled, once only, to be registered as a British overseas territories citizen if on 31 December 1982¹² he would have been entitled to registration as a citizen of the United Kingdom and colonies under the British Nationality Act 1964¹³ on the basis of a qualifying connection with a British overseas territory¹⁴ or, in the case of a woman, marriage to a person with such a qualifying connection¹⁵. In addition, the Secretary of State has a discretion to register as a British overseas territories citizen any person who renounced citizenship of the United Kingdom and colonies, provided that he has a qualifying connection with a British overseas territory or that, in the case of a woman, she has been married to a person who has or would if living have such a connection¹⁶. A person is to be taken to have the appropriate qualifying connection with a British overseas territory if he, his father or his father's father: (1) was born in that territory; or (2) is or was a person naturalised in that territory¹⁷; or (3) was registered as a citizen of the United Kingdom and colonies in that territory; or (4) became a British subject by reason of the annexation of any territory included in that territory¹⁸.

1 The provisions of the British Nationality Act 1981 s 12 (see para 41 ante) are applied to British overseas territories citizens and citizenship by s 24 (amended by virtue of the British Overseas Territories Act 2002 s 2(2) (a), (b)). British overseas territories citizens were formerly known as British dependent territories citizens: see paras 8, 44 ante. Since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship: see the British Overseas Territories Act 2002 s 3; and para 25 ante.

2 For the purposes of the British Nationality Act 1981, a person is of full age if he has attained the age of 18 years, and is of full capacity if he is not of unsound mind: s 50(11). For the purpose of renunciation only, a person who has been married is deemed to be of full age: s 12(5); applied by s 24 (as amended: see note 1 supra).

3 See *ibid* s 12(1), (2); applied by s 24 (as amended: see note 1 supra). As to declarations of renunciation see the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, regs 8, 9, Sch 5 (reg 8, Sch 5 amended by virtue of the British Overseas Territories Act 2002 s 2(3); and the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, reg 9 amended by virtue of the British Overseas Territories Act 2002 s 1(2)). As to the power to make regulations see para 6 ante.

4 See the British Nationality Act 1981 s 12(3); applied by s 24 (as amended: see note 1 supra).

5 As to the Secretary of State see para 2 ante.

6 See the British Nationality Act 1981 s 12(3); applied by s 24 (as amended: see note 1 supra).

7 The provisions of *ibid* s 13 (see para 41 ante) are applied to British overseas territories citizens and citizenship by s 24 (as amended: see note 1 supra).

8 See *ibid* s 13(1), (2); applied by s 24 (as amended: see note 1 supra).

9 As to the exercise of discretion see *ibid* s 44; and para 2 ante.

10 See *ibid* s 13(3); applied by s 24 (as amended: see note 1 supra).

11 As to citizenship of the United Kingdom and colonies see paras 16-21 ante. As to renunciation of citizenship of the United Kingdom and colonies see para 21 ante.

12 *Ie* immediately before the commencement of the British Nationality Act 1981: see para 5 note 1 ante.

13 le under the British Nationality Act 1964 s 1(1) (now repealed), which made provision for registration of persons who renounced citizenship in order to acquire or retain citizenship of a Commonwealth country.

14 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.

15 See the British Nationality Act 1981 s 22(1), (3) (s 22(1) amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). The qualifying connection is that specified in the British Nationality Act 1981 s 22(4) (as amended) (see the text and note 18 infra), and not that specified in the British Nationality Act 1964: *R v Secretary of State for the Home Department, ex p Patel and Wahid* [1991] Imm AR 25, DC.

16 See the British Nationality Act 1981 s 22(2) (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)).

17 As to when a person is taken to have been naturalised in a British overseas territory see para 45 note 6 ante.

18 British Nationality Act 1981 s 22(4) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to British subjects see paras 9, 66-71 ante. If the person has an appropriate qualifying connection with the United Kingdom he may be entitled, or eligible, to be registered as a British citizen: see the British Nationality Act 1981 s 10; and para 41 ante.

UPDATE

56 Renunciation and resumption

TEXT AND NOTES--An application for registration of an adult or young person as a British overseas territories citizen under the 1981 Act ss 22(1), (2), 24 must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character: British Nationality Act 1981 s 41A(2) (s 41A(2), (5) added by Borders, Citizenship and Immigration Act 2009 s 47(1) to replace corresponding provision in Immigration, Asylum and Nationality Act 2006 s 58). 'Adult or young person' means a person who has attained the age of ten at the time when the application is made: British Nationality Act 1981 s 41A(5).

TEXT AND NOTE 2--Where a provision of the British Nationality Act 1981 requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant's best interests: s 44A (added by Immigration, Asylum and Nationality Act 2006 s 49).

NOTE 2--British Nationality Act 1981 s 12(5) amended: Civil Partnership Act 2004 Sch 27 para 74.

NOTE 3--SI 1982/987 regs 8, 9, Sch 5 now British Nationality (British Overseas Territories) Regulations 2007, SI 2007/3139, regs 8, 9, Sch 4.

NOTE 16--British Nationality Act 1981 s 22(2) further amended: 2004 Act Sch 27 para 77.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(4) BRITISH OVERSEAS TERRITORIES CITIZENSHIP/57. Deprivation and loss.

57. Deprivation and loss.

A British overseas territories citizen¹ may be deprived of citizenship on the ground of fraud, misrepresentation, concealment of material fact, disloyalty or imprisonment². Registration or naturalisation as a British overseas territories citizen obtained by serious and causative fraud may be of no effect³.

On 1 July 1997 any person who, immediately before that date, was a British overseas territories citizen by virtue (wholly or partly) of a connection with Hong Kong⁴, and would not have been such a citizen but for that connection, ceased to hold British overseas territories citizenship⁵.

1 British overseas territories citizens were formerly known as British dependent territories citizens: see paras 8, 44 ante. Since 21 May 2002, most persons who were British overseas territories citizens immediately before that date have enjoyed British citizenship: see the British Overseas Territories Act 2002 s 3; and para 25 ante.

2 See the British Nationality Act 1981 s 40 (as amended) (applied by s 40(10)); and paras 42-43 ante. See also the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, regs 10-13 (amended by virtue of the British Overseas Territories Act 2002 ss 1(2), 2(3)); and the British Dependent Territories Citizenship (Deprivation) Rules 1982, SI 1982/989 (amended by virtue of the British Overseas Territories Act 2002 ss 1(2), 2(3)). As to the power to make regulations see para 6 ante.

3 Cf para 42 ante.

4 As to who has a connection with Hong Kong for these purposes see the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 2; and para 32 note 6 ante.

5 See the Hong Kong Act 1985 s 2(2), Schedule para 2(1)(a) (as amended); the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 3 (as amended); and para 61 post. A person who would, as a result, otherwise be stateless, became a British overseas citizen: see art 6(1) (as amended); and para 61 post. As to British overseas citizens see paras 8 ante, 58-62 post.

The British Nationality (Hong Kong) Act 1990 made provision for the acquisition of British citizenship by some of the people of Hong Kong: see para 32 ante. As to British citizens and citizenship see paras 8, 23-43 ante. Section 2(2) provided for a person to lose his British overseas territories citizenship if he became a British citizen under the British Nationality (Hong Kong) Act 1990, but this provision has not been brought into force: see para 32 note 5 ante.

UPDATE

57 Deprivation and loss

NOTE 2--SI 1982/987 replaced: British Nationality (British Overseas Territories) Regulations 2007, SI 2007/3139.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/ (5) BRITISH OVERSEAS CITIZENSHIP/58. In general.

(5) BRITISH OVERSEAS CITIZENSHIP

58. In general.

To replace the single status of citizenship of the United Kingdom and colonies¹, the restructured nationality law which took effect on 1 January 1983² provided two major permanent categories of citizenship³, each with territorial associations: (1) British citizenship⁴, linked with the territory of the United Kingdom⁵ itself; and (2) British overseas territories citizenship⁶, linked with the British overseas territories⁷. However, not all former citizens of the United Kingdom and colonies could be accommodated within these two categories, and accordingly the structure provided a third citizenship category: British overseas citizenship⁸. Unlike the other two, this is not an independent, perpetuated national status, but is a residuary category, designed to provide a form of British national status for those who would otherwise have lost it altogether on the abolition of citizenship of the United Kingdom and colonies, and for preventing statelessness⁹ among persons who, by reason of family or territorial connections, have some ground for looking to British nationality for relief from that condition. By reason of the very

restricted criteria for acquisition of British overseas citizenship, in particular the fact that it cannot be acquired by birth or descent (save in limited circumstances to prevent statelessness), or by naturalisation, it will in the course of time disappear¹⁰. It does not carry the right of abode in the United Kingdom or elsewhere¹¹.

1 As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

2 I.e. the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante. As to British nationality legislation see para 5 ante.

3 See para 8 ante.

4 As to British citizens and citizenship see paras 8, 23-43 ante.

5 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

6 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 ante.

7 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.

8 A fourth category with residuary and non-permanent characteristics similar to those of British overseas citizenship was introduced in 1986, namely British national (overseas) status: see paras 63-65 post.

9 This is an international obligation under the United Nations Convention on the Reduction of Statelessness (New York, 30 August 1961; TS 158 (1975); Cmnd 6364).

10 See paras 59-61 post. Apart from discretionary registration of minors, British overseas citizenship can now only be acquired by people who would otherwise be stateless.

11 As to the right of abode see para 14 ante.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/ (5) BRITISH OVERSEAS CITIZENSHIP/59. Automatic acquisition.

59. Automatic acquisition.

British overseas citizenship may be acquired automatically¹ either by operation of law or by birth.

Any person who immediately before 1 January 1983² was a citizen of the United Kingdom and colonies³, and who did not on that day become either a British citizen⁴ or a British overseas territories citizen⁵, became on that day a British overseas citizen⁶.

British overseas citizenship can be acquired at birth only by persons who would otherwise be born stateless⁷. Such a person will be a British overseas citizen by birth if he is born on or after 1 January 1983 in the United Kingdom or in a British overseas territory⁸, and at the time of his birth his father or mother⁹ is a British overseas citizen¹⁰.

Provision was also made for acquisition of British overseas citizenship automatically on 1 July 1997, and thereafter by birth, to prevent statelessness resulting from the return of Hong Kong to the People's Republic of China¹¹.

1 I.e. without application. As to applications see para 79 post.

2 I.e. the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

3 As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

4 As to British citizens and citizenship see paras 8, 23-43 ante. As to the automatic acquisition of British citizenship on 1 January 1983 see para 24 ante.

5 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 ante. As to the automatic acquisition of British overseas territories citizenship on 1 January 1983 see para 45 ante.

6 British Nationality Act 1981 s 26 (amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b)). A person who is apparently a British overseas citizen may turn out not to be so: eg because he in fact became a British citizen on 1 January 1983, having previously acquired the right of abode by settlement and five years' ordinary residence (see para 22 head (3) ante) (*Britto v Secretary of State for the Home Department* [1984] Imm AR 93, IAT) or because he had lost citizenship of the United Kingdom and colonies (*Bibi v Secretary of State for the Home Department* [1987] Imm AR 340, CA (where a woman living in India, born in Burma in 1927 to a father born in Mauritius in 1908, did not lose citizenship of the United Kingdom and colonies under the Burma Independence Act 1947, but did lose it under the Mauritius Independence Act 1968 because she then became a citizen of Mauritius, even though the Mauritian authorities refused to recognise her as a citizen)).

7 The provisions of the British Nationality Act 1981 are designed to comply with the United Nations Convention on the Reduction of Statelessness (New York, 30 August 1961; TS 158 (1975); Cmnd 6364).

8 As to the meaning of 'United Kingdom' see para 5 note 1 ante. As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.

9 See para 26 notes 6, 7 ante.

10 See the British Nationality Act 1981 s 36, Sch 2 paras 1, 2 (Sch 2 para 1 amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b); and the British Nationality Act 1981 Sch 2 para 2 amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)).

11 See para 61 post.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/ (5) BRITISH OVERSEAS CITIZENSHIP/60. Acquisition by registration.

60. Acquisition by registration.

The Secretary of State¹ may, if he thinks fit, grant any application² for registration of a minor³ as a British overseas citizen⁴. Otherwise, acquisition by registration as a British overseas citizen is now possible only for stateless persons⁵.

A person born outside the United Kingdom⁶ and the British overseas territories⁷ on or after 1 January 1983⁸, who is and always has been stateless, is entitled on application to registration as a British overseas citizen if: (1) at the time of his birth his father or mother⁹ was a British overseas citizen; (2) he himself was in the United Kingdom or a British overseas territory at the beginning of the period of three years ending with the date of application; and (3) during that period he has not been absent from both the United Kingdom and the British overseas territories for more than 270 days¹⁰.

Provision is made for the registration of certain stateless persons born before 1 January 1983¹¹.

In addition to the provisions described above, special provision is made in relation to Hong Kong in order to prevent statelessness¹².

1 As to the Secretary of State see para 2 ante.

2 As to applications see para 79 post.

- 3 For the meaning of 'minor' see para 26 note 11 ante.
- 4 British Nationality Act 1981 s 27(1). This power is exercised very sparingly as British overseas citizenship is intended to be a transitional category. As to the exercise of discretion see s 44; and para 2 ante.
- 5 The right of certain women (wives of citizens of the United Kingdom and colonies) and children (born in foreign countries between 1 January 1983 and 31 December 1987 whose fathers were citizens of the United Kingdom and colonies by descent) to be registered as citizens of the United Kingdom and colonies under previous legislation was extended as a right to registration as British overseas citizens in limited form and for limited periods which have now expired: see *ibid* ss 27(2), 28.
- 6 As to the meaning of 'United Kingdom' see para 5 note 1 ante.
- 7 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.
- 8 I.e. the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.
- 9 See para 26 notes 6, 7 ante.
- 10 See the British Nationality Act 1981 s 36, Sch 2 para 4 (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). See also the British Nationality Act 1981 s 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to the registration of stateless persons see also paras 35, 50 ante, 70 post. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the person as fulfilling the requirements of head (3) in the text although the number of days on which he was absent from both the United Kingdom and the British overseas territories exceeds the number mentioned: see the British Nationality Act 1981 Sch 2 para 6 (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)).
- 11 See the British Nationality Act 1981 Sch 2 para 5.
- 12 See para 61 post.

UPDATE

60 Acquisition by registration

TEXT AND NOTE 4--An application for registration of an adult or young person as a British overseas citizen under the 1981 Act s 27(1) must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character: British Nationality Act 1981 s 41A(3) (s 41A(3), (5) added by Borders, Citizenship and Immigration Act 2009 s 47(1) to replace corresponding provision in Immigration, Asylum and Nationality Act 2006 s 58). 'Adult or young person' means a person who has attained the age of ten at the time when the application is made: British Nationality Act 1981 s 41A(5).

NOTE 5--1981 Act ss 27(2), 28 repealed: Nationality, Immigration and Asylum Act 2002 s 15, Sch 2 para 1.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/ (5) BRITISH OVERSEAS CITIZENSHIP/61. Hong Kong statelessness.

61. Hong Kong statelessness.

With effect from 1 July 1997 British sovereignty over Hong Kong ceased¹; Hong Kong ceased to be a British overseas territory² and the territory reverted to China³. On that date, all those who had British overseas territories citizenship⁴ by virtue (wholly or partly) of a connection with Hong Kong⁵, and who but for that connection would not have had such citizenship, lost it⁶.

Before that date, some had already acquired British citizenship under the Citizenship Selection Scheme⁷, and others acquired British national (overseas) status created for this eventuality⁸, but neither acquisition was automatic and British national (overseas) status cannot be transmitted to children. In keeping with its residuary character, British overseas citizenship was made available to prevent remaining Hong Kong British overseas territories citizens becoming stateless on 1 July 1997, and their children and grandchildren being born stateless thereafter⁹.

A person who on 1 July 1997 lost British overseas territories citizenship because he had it only by virtue of a connection with Hong Kong, and who would otherwise have been stateless as a result, became on that date a British overseas citizen¹⁰. A person born on or after 1 July 1997, who would otherwise have been born stateless, is a British overseas citizen if at the time of his birth his father or mother¹¹ is a British national (overseas) or a British overseas citizen who acquired that status on 1 July 1997 as a result of losing British overseas territories citizenship¹². The child of such a British overseas citizen¹³, born stateless outside the British overseas territories on or after 1 July 1997, is entitled to registration as a British overseas citizen if an application is made within 12 months of the birth¹⁴, and the father or mother of the parent in question was, immediately before 1 July 1997, a British overseas territories citizen otherwise than by descent¹⁵ by virtue of having a connection with Hong Kong, or would have been but for his or her death¹⁶.

Certain British overseas citizens and others from Hong Kong who, but for their British status, would be stateless, have since 1 July 1997 been eligible for registration by entitlement as British citizens under the British Nationality (Hong Kong) Act 1997¹⁷.

1 See the Hong Kong Act 1985 s 1; and COMMONWEALTH vol 13 (2009) PARA 727.

2 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.

3 Now the People's Republic of China, though the People's Republic did not, of course, exist when Hong Kong came under British sovereignty in the nineteenth century.

4 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 ante.

5 As to who has a connection with Hong Kong for these purposes see the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 2; and para 32 note 6 ante.

6 See the Hong Kong Act 1985 s 2(2), Schedule para 2(1)(a) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)); and the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 3 (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). See also para 57 ante.

7 See the British Nationality (Hong Kong) Act 1990; the British Nationality (Hong Kong) (Selection Scheme) Order 1990, SI 1990/2292 (as amended); and para 32 ante.

8 As to British national (overseas) status see paras 8 ante, 63-65 post.

9 See the text and notes 10-16 infra. Note that under Chinese nationality law all Hong Kong Chinese are Chinese nationals, and are therefore not stateless.

10 See the Hong Kong Act 1985 Schedule para 2(1)(a), (3) (Schedule para 2(1)(a) as amended: see note 6 supra); and the Hong Kong (British Nationality) Order 1986, SI 1986/948, arts 3, 6(1) (amended by virtue of the British Overseas Territories Act 2002 s 2(3)).

11 As to legitimated and posthumous children see the British Nationality Act 1981 ss 47, 48, 50(9); and para 26 notes 6, 7 ante (applied by the Hong Kong (British Nationality) Order 1986, SI 1986/948, arts 1(4), 7(7)(c)).

12 See the Hong Kong Act 1985 Schedule para 2(3); and the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 6(2).

13 Is a person who acquired British overseas citizenship by virtue of *ibid* art 6(2) (see the text and note 12 supra) and who held that citizenship at the time of the child's birth.

14 This may be extended to six years, if in the special circumstances of any particular case the Secretary of State thinks fit: see *ibid* art 6(5). As to the Secretary of State see para 2 ante. As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante.

15 As to citizenship by descent see para 55 ante.

16 See the Hong Kong Act 1985 Schedule para 2(3); and the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 6(3), (4).

17 See para 34 ante.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/ (5) BRITISH OVERSEAS CITIZENSHIP/62. Renunciation, etc.

62. Renunciation, etc.

A British overseas citizen¹ of full age and capacity² may renounce his citizenship by declaration, upon registration of which he ceases to be a British overseas citizen³. However, the person must have or be about to acquire some other citizenship or nationality⁴. The Secretary of State⁵ must be satisfied on this point; and even if the declaration is registered, should the renouncer not acquire some such other citizenship within six months, the registration will be of no effect and he will remain a British overseas citizen⁶.

There is no provision for resumption of British overseas citizenship once renounced, or for its acquisition by a person who renounced citizenship of the United Kingdom and colonies⁷. Nor are there any provisions for automatic loss, or deprivation, of British overseas citizenship.

1 The provisions of the British Nationality Act 1981 s 12 (see para 41 ante) are applied to British overseas citizens and citizenship by s 29.

2 For the purposes of the British Nationality Act 1981, a person is of full age if he has attained the age of 18 years, and is of full capacity if he is not of unsound mind: s 50(11). For the purpose of renunciation only, a person who has been married is deemed to be of full age: s 12(5) (applied by s 29).

3 See *ibid* s 12(1), (2) (applied by s 29). As to declarations of renunciation see the British Nationality (General) Regulations 1982, SI 1982/986, regs 8, 9, Sch 5 (reg 9 amended by virtue of the British Overseas Territories Act 2002 s 1(2)). As to the power to make regulations see para 6 ante.

4 See the British Nationality Act 1981 s 12(3) (applied by s 29).

5 As to the Secretary of State see para 2 ante.

6 See the British Nationality Act 1981 s 12(3) (applied by s 29).

7 As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

UPDATE

62 Renunciation, etc

TEXT AND NOTE 2--Where a provision of the British Nationality Act 1981 requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant's best interests: s 44A (added by Immigration, Asylum and Nationality Act 2006 s 49).

NOTE 2--British Nationality Act 1981 s 12(5) amended: Civil Partnership Act 2004 Sch 27 para 74.

NOTE 3--SI 1982/986 regs 8, 9, Sch 5 now the British Nationality (General) Regulations 2003, SI 2003/548, regs 8, 9, Sch 5 (Sch 5 amended by SI 2005/2114, SI 2007/3137).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(6) BRITISH NATIONAL (OVERSEAS) STATUS/63. In general.

(6) BRITISH NATIONAL (OVERSEAS) STATUS

63. In general.

The status of British national (overseas) was created specifically to provide a form of British nationality for the people of Hong Kong before they automatically ceased to be British overseas territories citizens¹ on 1 July 1997², when sovereignty over Hong Kong passed from the United Kingdom to the People's Republic of China³. It is even more limited and temporary than British overseas citizenship⁴. It came into existence on 1 July 1987⁵, and since the end of 1997 it cannot be acquired by any person or by any means at all⁶; it will accordingly not outlive those who acquired it between those dates. It does not carry the right of abode in the United Kingdom⁷, and it is arguably a status with a related passport facility rather than a true citizenship or nationality⁸.

1 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 ante.

2 As to the loss of citizenship see the Hong Kong Act 1985 s 2(2), Schedule (amended by virtue of the British Overseas Territories Act 2002 s 2(3)); the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 3 (as amended); and paras 57, 61 ante.

3 See the Hong Kong Act 1985 s 1; para 61 ante; and COMMONWEALTH vol 13 (2009) PARA 727.

4 See para 58 ante.

5 See the Hong Kong Act 1985 Schedule para 2; and the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 4(1).

6 See para 64 post.

7 As to the right of abode see para 14 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

8 It is unlikely that the same could be said of British overseas citizenship (see paras 58-62 ante) and of British subject status (see paras 66-71 post), since both are continuations (in somewhat different form) of a previously existing national status, and continue to be capable of acquisition, albeit only to avoid statelessness.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(6) BRITISH NATIONAL (OVERSEAS) STATUS/64. Acquisition.

64. Acquisition.

Any person who was a British overseas territories citizen¹ by virtue (wholly or partly) of a connection with Hong Kong², and who but for that connection would not have been such a citizen, was entitled before 1 July 1997 to be registered as a British national (overseas) and to hold or be included in a passport appropriate to that status³. In the case of persons born during

the six months from 1 January to 30 June 1997 inclusive, the period for acquisition of the status and passport was extended until the end of 1997⁴.

1 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 ante.

2 As to who has a connection with Hong Kong for these purposes see the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 2; and para 32 note 6 ante.

3 Ibid art 4(2). Applications had to be made in accordance with the British Nationality (Hong Kong) Regulations 1986, SI 1986/2175, regs 3-5, Sch 1. A timetable for the receipt of applications was introduced: see the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 4(2), (6), Sch 2 (art 4(2) amended, and art 4(6), Sch 2 added, by SI 1993/1795). An application made after a given deadline could be accepted if the applicant showed that there were special circumstances which justified his being registered as a British national (overseas): Hong Kong (British Nationality) Order 1986, SI 1986/948, art 4(4) (added by SI 1993/1795). Where any person was registered or naturalised after, or less than three months before, the relevant deadline as a British overseas territories citizen by virtue (wholly or partly) of his having a connection with Hong Kong and he made an application within three months after the date of his registration or naturalisation, the Secretary of State had to register him as a British national (overseas): see the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 4(6) (added by SI 1993/1795).

4 Hong Kong (British Nationality) Order 1986, SI 1986/948, art 4(2). It appears that a child born in the first half of 1997, in respect of whom an application was not made until the second half, acquired British overseas citizenship automatically on 1 July 1997 if he would otherwise have been stateless (see para 61 ante) and accordingly holds each status.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(6) BRITISH NATIONAL (OVERSEAS) STATUS/65. Loss, deprivation and renunciation.

65. Loss, deprivation and renunciation.

A British national (overseas) who ceased at any time before 1 July 1997 to be a British overseas territories citizen¹ ceased at the same time to be a British national (overseas)².

A British national (overseas)³ of full age and capacity⁴ may renounce his citizenship by declaration, upon registration of which he ceases to be a British overseas citizen⁵. However, the person must have or be about to acquire some other citizenship or nationality⁶. The Secretary of State⁷ must be satisfied on this point; and even if the declaration is registered, should the renouncer not acquire some such other citizenship within six months, the registration will be of no effect and he will remain a British national (overseas)⁸. There is no provision for resumption of British national (overseas) status once renounced.

A person may be deprived of British national (overseas) status on the ground of fraud, false representation, concealment of material fact, disloyalty or imprisonment⁹. Registration as a British national (overseas) obtained by serious and causative fraud may be of no effect¹⁰.

1 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 ante.

2 Hong Kong (British Nationality) Order 1986, SI 1986/948, art 4(3). British national (overseas) status was not, of course, affected by the automatic loss of British overseas territories citizenship on 1 July 1997 under art 3 (as amended): see paras 57, 61, 63 ante.

3 The provisions of the British Nationality Act 1981 s 12 (see para 41 ante) are applied to British overseas citizens and citizenship by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(10).

4 For the purposes of the British Nationality Act 1981, a person is of full age if he has attained the age of 18 years, and is of full capacity if he is not of unsound mind: s 50(11). For the purpose of renunciation only, a person who has been married is deemed to be of full age: s 12(5) (applied by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(10)).

5 See the British Nationality Act 1981 s 12(1), (2) (applied by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(10)). As to declarations of renunciation see the British Nationality (Hong Kong) Regulations 1986, SI 1986/2175, regs 6, 7, Sch 2 (reg 7 amended by virtue of the British Overseas Territories Act 2002 s 1(2)).

6 See the British Nationality Act 1981 s 12(3) (applied by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(10)).

7 As to the Secretary of State see para 2 ante.

8 See the British Nationality Act 1981 s 12(3) (applied by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(10)).

9 See the British Nationality Act 1981 s 40 (as amended) (applied by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(11)); and paras 42-43 ante. See also the British Nationality (Hong Kong) Regulations 1986, SI 1986/2175, regs 8-10; and the Status of British National (Overseas) (Deprivation) Rules 1986, SI 1986/2176 (amended by virtue of the British Overseas Territories Act 2002 s 1(2)).

10 Cf para 42 ante.

UPDATE

65 Loss, deprivation and renunciation

TEXT AND NOTE 4--Where a provision of the British Nationality Act 1981 requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant's best interests: s 44A (added by Immigration, Asylum and Nationality Act 2006 s 49).

NOTE 4--British Nationality Act 1981 s 12(5) amended: Civil Partnership Act 2004 Sch 27 para 74.

NOTE 9--SI 1986/2175 regs 8-10 revoked: SI 2003/540.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/ (7) BRITISH SUBJECT STATUS/66. In general.

(7) BRITISH SUBJECT STATUS

66. In general.

Until 1 January 1949¹ the single common form of British nationality was the status of British subject². Upon the introduction with effect from that date of the distinction between citizenship of the United Kingdom and colonies³ and citizenship of independent Commonwealth countries⁴, the status of British subject remained the underlying common nationality of all such citizens⁵, as well as of certain Irish citizens⁶, and for some it remained their only national status⁷. From 1 January 1983⁸, however, the vast majority of holders of British nationality ceased to be British subjects⁹, although they remained Commonwealth citizens¹⁰. Save in the case of certain Irish citizens¹¹, the status of British subject is now incompatible with any other form of nationality¹². Retention of the status of British subject depends upon the grounds upon which the status was held under previous legislation¹³. The status can now only be newly acquired by certain persons

who would otherwise be stateless and, in the discretion of the Secretary of State, minors¹⁴. It will in the course of time disappear altogether¹⁵.

- 1 le the date of commencement of the British Nationality Act 1948: see para 5 note 7 ante.
- 2 See para 9 ante.
- 3 As to citizenship of the United Kingdom and colonies see paras 16-21 ante.
- 4 As to Commonwealth citizens see para 11 ante.
- 5 See the British Nationality Act 1948 s 1(1) (now repealed); and para 9 ante. The British Nationality Act 1948 continues to be of relevance in deciding whether a person has retained British subject status. As to the repeal and the continued relevance of the British Nationality Act 1948 see para 5 ante.
- 6 See *ibid* s 2 (now repealed); and para 67 post.
- 7 See *ibid* s 13(1), Sch 3 (both now repealed); and para 68 post.
- 8 le the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.
- 9 See paras 8-9 ante. Under the British Nationality Act 1981 most holders of British nationality became British citizens (see paras 23-43 ante), British overseas territories citizens (formerly known as British dependent territories citizens) (see paras 44-57 ante) or British overseas citizens (see paras 58-62 ante). The status of British national (overseas) (see paras 63-65 ante) was not introduced until 1 July 1987.
- 10 The terms 'British subject' and 'Commonwealth citizen' in any enactment or instrument passed or made before 1 January 1983 are, in relation to any time prior to 1983, interchangeable but, in relation to any time since 1 January 1983, the terms have not been interchangeable and must be taken to refer only to those who are Commonwealth citizens under the British Nationality Act 1981: see s 51(1), (2), (3)(c); and para 9 ante. See also para 11 ante. Since 1 January 1983 nobody can have the status of Commonwealth citizen or British subject otherwise than under the British Nationality Act 1981: s 37(4).
- 11 See para 67 post.
- 12 See the British Nationality Act 1981 s 35; and para 71 post.
- 13 See paras 67-68 post.
- 14 See paras 69-70 post. As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante.
- 15 Cf British overseas citizens (see para 58 ante) and British nationals (overseas) (see para 63 ante).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/ (7) BRITISH SUBJECT STATUS/67. Retention and deemed retention: Irish British subjects.

67. Retention and deemed retention: Irish British subjects.

The retention of the status of British subject by certain Irish citizens is an extension of a provision which came into force on 1 January 1949¹ and was repealed with effect from 1 January 1983²; it applies only to those who immediately before 1 January 1949 were both citizens of Eire³ and British subjects, and accordingly will become defunct when there are no longer any such persons in existence.

From 1949 to 1982 inclusive, any person who immediately before 1 January 1949 was both a citizen of Eire and a British subject was entitled to give notice to the Secretary of State⁴ claiming, on specified grounds⁵, to remain a British subject⁶. If he did so, he was deemed never

to have lost⁷ his status as a British subject⁸. Such notice could be given, with the same result, on behalf of a child under 16 by his parent or guardian⁹.

Anyone who remained a British subject as the result of the giving of such notice before 1 January 1983 remains a British subject after that date¹⁰, and is deemed to have remained a British subject continuously since 1 January 1949¹¹. Any citizen of the Republic of Ireland who could have remained a British subject by the giving of such notice but did not do so before 1 January 1983 may give notice in writing to the Secretary of State claiming to remain a British subject on either or both of the following grounds, namely: (1) that he is or has been in Crown service under the government of the United Kingdom¹²; or (2) that he has associations by way of descent, residence or otherwise with the United Kingdom or with any British overseas territory¹³. Upon doing so he becomes a British subject¹⁴, and is deemed to have remained a British subject since 1 January 1949¹⁵.

Unlike other British subjects, citizens of the Republic of Ireland who remain British subjects under the provisions described above do not lose that status upon acquisition of another citizenship or nationality¹⁶.

1 I.e. the date of commencement of the British Nationality Act 1948: see para 5 note 7 ante.

2 I.e. the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

3 Eire became known as the Republic of Ireland on 18 April 1949: see the Ireland Act 1949 s 1 (as amended); and para 12 note 1 ante.

4 As to the Secretary of State see para 2 ante.

5 What the grounds were is now of less importance than whether notice was given; however, the grounds specified were: (1) that he was in Crown service under the United Kingdom government; (2) that he held a British passport issued by the government of the United Kingdom or of any colony, protectorate, United Kingdom mandated territory or United Kingdom trust territory; or (3) that he had associations by way of descent, residence or otherwise with the United Kingdom or with any colony or protectorate or any United Kingdom mandated or trust territory (see paras 17 note 6, 19 note 7 ante): British Nationality Act 1948 s 2(1) (a)-(c) (now repealed). As to the repeal and the continued relevance of the British Nationality Act 1948 see para 5 ante.

6 See *ibid* s 2(1) (now repealed).

7 I.e. despite any gap between the coming into force of the British Nationality Act 1948 and the giving of such notice. The effect of giving notice was not that he re-acquired that status but that he was deemed to have retained it without interruption.

8 See the British Nationality Act 1948 s 2(1) (now repealed).

9 See *ibid* s 2(2) (now repealed).

10 See the British Nationality Act 1981 s 31(1), (2).

11 See *ibid* s 31(4).

12 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

13 See the British Nationality Act 1981 s 31(3) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.

14 See the British Nationality Act 1981 s 31(3) (as amended: see note 13 supra).

15 See *ibid* s 31(4). The provision for giving notice on behalf of a child under 16 is not repeated, since only those in existence before 1 January 1949 are eligible.

16 See *ibid* s 35; and para 71 post. Before 1 January 1983 only a small minority of British subjects had no other citizenship or nationality; the vast majority did (being citizens either of the United Kingdom and colonies or of a Commonwealth country). These Irish citizen British subjects are now the only persons in that position.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/ (7) BRITISH SUBJECT STATUS/68. Retention: British subjects without citizenship.

68. Retention: British subjects without citizenship.

The intention of the British Nationality Act 1948 was that all existing British subjects should thereafter have, in addition, a citizenship status: either of the United Kingdom and colonies¹, or of a Commonwealth country². However, not all the original Commonwealth countries³ had citizenship laws in force on 1 January 1949⁴. A person who was, or who was deemed to be⁵, a British subject on 31 December 1948, and who on 1 January 1949 was potentially a citizen of one of the original Commonwealth countries⁶ but not actually such a citizen, became on that date a British subject without citizenship, and retained that status until a citizenship law came into force in that country⁷ or he became a citizen of the United Kingdom and colonies, a citizen of any Commonwealth country, a citizen of the Republic of Ireland, or an alien⁸. However, for the purposes of British nationality law no citizenship law came into force in India or Pakistan⁹, so that potential citizens of those countries remained British subjects without citizenship unless they acquired some other nationality. Any such person who was still a British subject without citizenship immediately before 1 January 1983¹⁰ became on that date a British subject¹¹; but the status of British subject is lost if the person acquires any other citizenship or nationality whatever¹².

A person who, before 1 January 1949, ceased to be a British subject¹³ because, while he was a minor, his parent ceased to be a British subject, and who would otherwise have become a British subject without citizenship as described above¹⁴, was entitled to make a declaration of his intention to resume British nationality¹⁵, and upon registration of the declaration by the Secretary of State he became a British subject without citizenship¹⁶. Any person who, as a result of such a declaration, was a British subject without citizenship immediately before 1 January 1983, became on that date a British subject¹⁷; but the status of British subject is lost if the person acquires any other citizenship or nationality whatever¹⁸.

From 5 October 1965¹⁹ to 31 December 1982²⁰, an alien woman was entitled, on application, to be registered²¹ as a British subject if she had been married to a man who, at the date of the application, was, or would but for his death have been, a British subject without citizenship under the provisions described above²², or a citizen of the Republic of Ireland who had remained a British subject as a result of giving notice²³. The status of British subject so acquired was lost if she became a citizen of the United Kingdom and colonies, a citizen of any Commonwealth country²⁴, or a citizen of the Republic of Ireland²⁵, or if she was deprived of it on the ground of fraud, false representation or concealment of any material fact²⁶. Any woman who was still a British subject immediately before 1 January 1983 by reason of such registration became on that date a British subject²⁷. The right to register was extended until 31 December 1987²⁸. A woman who is a British subject by virtue of registration²⁹ under the provisions described above will lose that status if she acquires any other citizenship or nationality whatever³⁰.

1 As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

2 Some people were both, but the general scheme was alternative: see *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Ross-Clunis* [1991] 2 AC 439, [1991] 3 All ER 353, HL. As to Commonwealth citizens see para 11 ante.

3 Ie those listed in the British Nationality Act 1948 s 1(3) as originally enacted: see para 11 note 4 ante.

- 4 Ie the date of commencement of the British Nationality Act 1948: see para 5 note 7 ante. As to the repeal and the continued relevance of the British Nationality Acts 1948 to 1965 see para 5 ante.
- 5 See para 17 text and note 10 ante.
- 6 As to those who were potentially citizens of a Commonwealth country see para 17 ante.
- 7 When a citizenship law came into force in that country he became a citizen of the United Kingdom and colonies unless he became, or had previously become, a citizen of that Commonwealth country or of any other country: see the British Nationality Act 1948 ss 12(4), 13 (now repealed); and para 18 ante.
- 8 See *ibid* s 13 (now repealed). As to aliens see para 13 ante.
- 9 India and Pakistan had their own citizenship laws, of course, but only laws designated by the Secretary of State fulfilled the definition of 'citizenship law' for the purposes of British nationality, and no such designation was ever made in the case of these countries: see *ibid* s 32(8) (now repealed); *Gowa v A-G* [1985] 1 WLR 1003, HL; and para 18 ante. As to the Secretary of State see para 2 ante.
- 10 Ie the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.
- 11 See the British Nationality Act 1981 s 30(a). Note that the words 'without citizenship' have been dropped.
- 12 See *ibid* s 35; and para 71 post.
- 13 Ie under the British Nationality and Status of Aliens Act 1914 s 12(1) (now repealed). The British Nationality Act 1948, which repealed this provision, also renamed the British Nationality and Status of Aliens Act 1914 as the Status of Aliens Act 1914: see para 5 note 9 ante.
- 14 See the British Nationality Act 1948 s 13 (now repealed); and the text to note 8 *supra*. In determining whether a woman who had married an alien would have become a British subject without citizenship, her marriage was to be disregarded: see s 16 (now repealed).
- 15 The declaration could be made at any time before 1 January 1950, or (if later) within one year of his twenty-first birthday, or such longer period as the Secretary of State might allow: see *ibid* s 16 (now repealed). However, a declaration could not be made on or after 1 January 1983 (ie the date on which the repeal of s 16 took effect).
- 16 See the British Nationality Act 1948 s 16 (now repealed).
- 17 See the British Nationality Act 1981 s 30(a). Note that the words 'without citizenship' have been dropped.
- 18 See *ibid* s 35; and para 71 post.
- 19 Ie the date of the commencement of the British Nationality Act 1965: see s 5(4) (now repealed: see note 20 *infra*). See also note 4 *supra*.
- 20 After this date the British Nationality Act 1965 was repealed: see the British Nationality Act 1981 s 52(8), Sch 9.
- 21 Ie under the British Nationality Act 1965 s 1 (now repealed: see note 20 *supra*). If she had previously renounced or been deprived of citizenship of the United Kingdom and colonies, or been deprived of British subject status, such registration was discretionary.
- 22 Ie the British Nationality Act 1948 ss 13, 16 (both now repealed): see the text to notes 8, 16 *supra*.
- 23 Ie under *ibid* s 2(1) (now repealed): see para 67 ante.
- 24 See para 11 note 4 ante. If her registration was based on her husband's potential citizenship of Pakistan, she lost the status of British subject under these provisions on becoming a citizen of Pakistan: see the British Nationality Act 1965 s 2(2A) (added by the Pakistan Act 1973 s 1(2), Sch 1; now repealed).
- 25 British Nationality Act 1965 s 2 (now repealed).
- 26 Ie under *ibid* s 3 (now repealed), which applied the provisions of the British Nationality Act 1948 s 20 (now repealed) (see para 21 ante) relating to notice and the right to an inquiry to such a person.
- 27 See the British Nationality Act 1981 s 30(b).

28 See *ibid* s 33. Her husband had to be a British subject on the date of application, and she had to have been married to him throughout the period from 1 January 1983 to the date of application: see s 33.

29 *Ie* whether registered before or after 1 January 1983.

30 See *ibid* s 35; and para 71 post.

UPDATE

68 Retention: British subjects without citizenship

TEXT AND NOTE 28--1981 Act s 33 repealed: Nationality, Immigration and Asylum Act 2002 s 15, Sch 2 para 1.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/ (7) BRITISH SUBJECT STATUS/69. Acquisition by birth: statelessness.

69. Acquisition by birth: statelessness.

Only persons who would otherwise have no other citizenship or nationality can become British subjects by birth. A person born in the United Kingdom¹ or a British overseas territory² on or after 1 January 1983³, who would otherwise be born stateless, is a British subject if at the time of his birth his father or mother⁴ was a British subject⁵, unless he is born a British citizen⁶, a British overseas territories citizen⁷ or a British overseas citizen⁸ because one of his parents has that status⁹. He will lose the status of British subject if he acquires any other citizenship or nationality whatever¹⁰.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.

3 *Ie* the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

4 See para 26 notes 6, 7 ante.

5 See the British Nationality Act 1981 s 36, Sch 2 paras 1(1), (2), 2(1), (2) (Sch 2 para 1(2) amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b); and the British Nationality Act 1981 Sch 2 para 2(1) amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)).

6 As to British citizens and citizenship see paras 8, 23-43 ante.

7 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 ante.

8 As to British overseas citizens see paras 8, 58-62 ante.

9 See the British Nationality Act 1981 Sch 2 paras 1(3), 2(3). As to the circumstances in which a person who would otherwise be born stateless acquires British citizenship by birth see para 26 ante; as to the circumstances in which a person who would otherwise be born stateless acquires British overseas territories citizenship by birth see para 47 ante; and as to the circumstances in which a person who would otherwise be born stateless acquires British overseas citizenship by birth see para 59 ante.

10 See *ibid* s 35; and para 71 post. This does not apply to those who are British subjects by virtue of s 31 (as amended) (see para 67 ante): see s 35.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/ (7) BRITISH SUBJECT STATUS/70. Acquisition by registration.

70. Acquisition by registration.

A person born outside the United Kingdom¹ and the British overseas territories² on or after 1 January 1983³, who is and always has been stateless, is entitled on application⁴ to registration as a British subject if: (1) at the time of his birth his father or mother⁵ was a British subject, but neither of them was a British citizen, a British overseas territories citizen or a British overseas citizen⁶; (2) he himself was in the United Kingdom or a British overseas territory at the beginning of the period of three years ending with the date of application; and (3) during that period he has not been absent from both the United Kingdom and the British overseas territories for more than 270 days⁷. A person so registered will lose the status of British subject if he acquires any other citizenship or nationality whatever⁸.

The Secretary of State may, if he thinks fit, grant any application for registration of a minor as a British subject⁹. A person so registered will lose the status of British subject if he acquires any other citizenship or nationality whatever¹⁰.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 post.

3 I.e. the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

4 As to applications see para 79 post.

5 See para 26 notes 6, 7 ante.

6 If one of his parents was a British citizen, a British overseas territories citizen or a British overseas citizen, the applicant is entitled to registration as that kind of citizen: see paras 35, 50, 60 ante. As to British citizens and citizenship see paras 8, 23-43 ante; as to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 ante; and as to British overseas citizens see paras 8, 58-62 ante.

7 See the British Nationality Act 1981 s 36, Sch 2 para 4 (amended by virtue of the British Overseas Territories Act 2002 ss 1(1)(b), 2(2)(b)). See also the British Nationality Act 1981 s 50(10)(b) (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to the registration of stateless persons see also paras 35, 50, 60 ante. If in the special circumstances of any particular case the Secretary of State thinks fit, he may treat the person as fulfilling the requirements of head (3) in the text although the number of days on which he was absent from both the United Kingdom and the British overseas territories exceeds the number mentioned: see the British Nationality Act 1981 Sch 2 para 6 (amended by virtue of the British Overseas Territories Act 2002 s 1(1)(b)). As to the Secretary of State see para 2 ante. As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 ante.

8 See *ibid* s 35; and para 71 post.

9 See *ibid* s 32.

10 See *ibid* s 35.

UPDATE

70 Acquisition by registration

TEXT AND NOTE 9--An application for registration of an adult or young person as a British subject under the 1981 Act s 32 must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character: British Nationality Act 1981 s 41A(4) (s 41A(4), (5) added by Borders, Citizenship and Immigration Act 2009 s

47(1) to replace corresponding provision in Immigration, Asylum and Nationality Act 2006 s 58). 'Adult or young person' means a person who has attained the age of ten at the time when the application is made: British Nationality Act 1981 s 41A(5).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/ (7) BRITISH SUBJECT STATUS/71. Renunciation and loss.

71. Renunciation and loss.

A British subject¹ of full age and capacity² may renounce his status by declaration, upon registration of which he ceases to be a British subject³. However, the person must have or be about to acquire some other citizenship or nationality⁴. The Secretary of State⁵ must be satisfied on this point; and even if the declaration is registered, should the renouncer not acquire some such other citizenship within six months, the registration will be of no effect and he will remain a British subject⁶. There is no provision for resumption of the status of British subject, once renounced.

Any person who is a British subject under the British Nationality Act 1981, except one who has retained (or is deemed to have retained) that status by virtue of the special provisions for Irish citizens⁷, will cease automatically to be a British subject if, in whatever circumstances and whether under the British Nationality Act 1981 or otherwise, he acquires any other citizenship or nationality whatever⁸.

1 The provisions of the British Nationality Act 1981 s 12 (see para 41 ante) are applied to British subjects by s 34.

2 For the purposes of the British Nationality Act 1981, a person is of full age if he has attained the age of 18 years, and is of full capacity if he is not of unsound mind: s 50(11). For the purpose of renunciation only, a person who has been married is deemed to be of full age: s 12(5) (applied by s 34).

3 See *ibid* s 12(1), (2) (applied by s 34). As to declarations of renunciation see the British Nationality (General) Regulations 1982, SI 1982/986, regs 8, 9, Sch 5 (reg 9 amended by virtue of the British Overseas Territories Act 2002 s 1(2)). As to the power to make regulations see para 6 ante.

4 See the British Nationality Act 1981 s 12(3) (applied by s 34). Note that, unless he is an Irish British subject (see para 67 ante), acquisition of any other citizenship or nationality will automatically have destroyed British subject status without the need for renunciation: see the text and note 8 *infra*.

5 As to the Secretary of State see para 2 ante.

6 See the British Nationality Act 1981 s 12(3) (applied by s 34).

7 See para 67 ante.

8 British Nationality Act 1981 s 35. As to automatic loss under the earlier law see the British Nationality Act 1948 ss 13(1), 16(2) (both now repealed); and the British Nationality Act 1965 s 2(2) (now repealed).

UPDATE

71 Renunciation and loss

TEXT AND NOTE 2--Where a provision of the British Nationality Act 1981 requires an applicant to be of full capacity, the Secretary of State may waive the requirement in respect of a specified applicant if he thinks it in the applicant's best interests: s 44A (added by Immigration, Asylum and Nationality Act 2006 s 49).

NOTE 2--British Nationality Act 1981 s 12(5) amended: Civil Partnership Act 2004 Sch 27 para 74.

NOTE 3--SI 1982/986 regs 8, 9, Sch 5 now the British Nationality (General) Regulations 2003, SI 2003/548, regs 8, 9, Sch 5 (Sch 5 amended by SI 2005/2114, SI 2007/3137).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(8) BRITISH PROTECTED PERSON STATUS/72. In general.

(8) BRITISH PROTECTED PERSON STATUS

72. In general.

The status of British protected person¹ arose as a result of the government of the United Kingdom² exercising some form of administration or control over territories which were not colonies or otherwise part of the Crown's dominions³, either of its own motion in the case of protectorates and protected states, or under the auspices of the United Nations or the League of Nations in the case of United Kingdom trust territories or mandated territories⁴. Although there are no longer any such territories, some persons who acquired British protected person status have retained it; but nobody is now eligible to acquire it save certain persons with a British protected person parent who would otherwise be stateless⁵. The status of British protected persons is anomalous: they are not aliens⁶; they have no right of abode in the United Kingdom⁷ and are subject to United Kingdom immigration control⁸; and it appears that they may not even hold British nationality, at least for some purposes⁹. British protected persons may be employed in any civil capacity under the Crown¹⁰. The status is now held, or acquired, either by virtue of the Solomon Islands Act 1978¹¹, or by virtue of an Order in Council¹² made in relation to any territory which was at any time before 1 January 1983 a protectorate or protected state for the purposes of the British Nationality Act 1948, or a United Kingdom trust territory within the meaning of that Act¹³. The status of British protected person is lost upon the subsequent acquisition of another nationality, including British citizenship, British overseas territories citizenship and British overseas citizenship¹⁴, although the status was held to be consistent with citizenship of the United Kingdom and colonies¹⁵ so that both could be held simultaneously under the British Nationality Act 1948¹⁶.

1 British protected persons are now statutorily defined as those who have that status by virtue of the Solomon Islands Act 1978 (see para 73 post) or who are members of any class of person declared to be British protected persons by an Order in Council for the time being in force under the British Nationality Act 1981 s 38: s 50(1). Section 38 provides that Her Majesty may by Order in Council made in relation to any territory which was at any time before 1 January 1983 a protectorate or protected state for the purposes of the British Nationality Act 1948 or a United Kingdom trust territory within the meaning of that Act (see note 13 infra; and para 17 note 6 ante) declare any class of person who are connected with that territory and are not citizens of any Commonwealth country (see para 11 note 16 ante) which consists of or includes that territory to be British protected persons for the purposes of the British Nationality Act 1981: s 38(1). Any order so made is subject to annulment in pursuance of a resolution of either House of Parliament: s 38(2). As to the order that has been made see the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070 (as amended); and paras 74-76 post.

The order provides that, in relation to any time before 1 January 1983, a British protected person means a person who had that status by virtue of any provision of the British Protectorates, Protected States and Protected Persons Order 1949, SI 1949/140 (as amended), the British Protectorates, Protected States and Protected Persons Order 1965, SI 1965/1864 (as amended), the British Protectorates, Protected States and Protected Persons Order 1969, SI 1969/1832, the British Protectorates, Protected States and Protected Persons Order 1974, SI 1974/1895, or the British Protectorates, Protected States and Protected Persons Order 1978, SI 1978/1026, or by virtue of the Botswana Independence Act 1966 s 3(2), the Gambia Independence Act 1964 s 2(2), the Kenya Independence Act 1963 s 2(1), the Nigeria Independence Act 1960 s 2(1), the Zambia

Independence Act 1964 s 3(2), the Ghana Independence Act 1957 s 2, the Malawi Independence Act 1964 s 2(2), the Sierra Leone Independence Act 1961 s 2(1), the Uganda Independence Act 1962 s 2(1), or the Tanganyika Independence Act 1961 s 2(1) (all repealed): see the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 2(1), Schedule. See also the text and note 13 *infra*.

2 As to the meaning of 'United Kingdom' see para 5 note 1 *ante*.

3 See *R v Secretary of State for the Home Department, ex p Thakrar* [1974] QB 684 at 709-710, [1974] 2 All ER 261 at 272-273, CA, per Lawton LJ.

4 As to protectorates, protected states and United Kingdom trust territories see para 17 note 6 *ante*; and as to mandated territories see para 19 note 7 *ante*. The League of Nations was dissolved in 1946.

5 See para 75 *post*.

6 See the British Nationality Act 1981 ss 50(1), 51(4); and para 13 *ante*. See also the British Nationality Act 1948 ss 3(3), 32(1) (s 32(1) now repealed).

7 As to the right of abode see para 14 *ante*. See also para 22 *ante*.

8 As to immigration control see para 83 *et seq post*. It seems that British protected persons do not have the right to enter the United Kingdom, even if expelled from their country of residence with nowhere else to go: see *East African Asians v United Kingdom* (1973) 3 EHRR 76.

9 *R v Secretary of State for the Home Department, ex p Thakrar* [1974] QB 684, [1974] 2 All ER 261, CA; *R v Chief Immigration Officer, Gatwick Airport, ex p Harjendar Singh* [1987] Imm AR 346 per Nolan J who, upon being convinced that a British protected person had no right to enter the United Kingdom even when he had nowhere else to go, held that he must be a person 'not having a nationality', and accordingly a refugee, for the purposes of the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906) (which was not referred to in *R v Secretary of State for the Home Department, ex p Thakrar* *supra*). See, however, *Revenko v Secretary of State for the Home Department* [2001] QB 601, CA (a well-founded fear of persecution is a prerequisite of refugee status; mere statelessness or inability to return to the country of former habitual residence is insufficient). As to the meaning of 'refugee' see para 239 *post*.

To the very limited extent that the term 'British nationality' has been used in British nationality law, it was sometimes used as a synonym for British subject status: see para 7 *ante*. British protected persons were excluded from that class, but they are not aliens (see the text and note 6 *supra*) and have been issued with British passports (which describe the holder's 'nationality' as 'British Protected Person'). Notwithstanding *R v Chief Immigration Officer Gatwick Airport, ex p Harjendar Singh* *supra*, it still seems arguable that British protected person status is a form of nationality and, if so, that it can only be a form of British nationality. See also *R v Secretary of State for the Home Department, ex p Upadhey* (31 January 2000) Lexis, Enggen Library, Cases File.

10 See the Aliens Employment Act 1955 s 1 (amended by the European Communities (Employment in the Civil Service) Order 1991, SI 1991/1221, art 2).

11 See note 1 *supra*; and para 73 *post*.

12 See note 1 *supra*; and para 75 *post*.

13 See the British Nationality Act 1981 ss 38, 50(1). These varied from time to time, and included: the Aden Protectorate (later known as the Protectorate of South Arabia), the Bechuanaland Protectorate, the British Solomon Islands Protectorate, the Gambia Protectorate, the Kenya Protectorate, the Nigeria Protectorate, Northern Rhodesia (a protectorate), the Northern Territories of the Gold Coast (a protectorate), the Nyasaland Protectorate, the Sierra Leone Protectorate, the Somaliland Protectorate, Swaziland (which has been both a protectorate and a protected state), the Uganda Protectorate, the Zanzibar Protectorate, Kamaran (a protectorate), the Malay States (ie Johore, Pahang, Negri Sembilan, Selangor, Perak, Kedah, Perlis, Kelantan and Trengganu) (protected states), Brunei (a protected state), Tonga (a protected state), the Maldive Islands (a protected state), the Persian Gulf States (ie Kuwait, Bahrain, Qatar, and the Trucial Sheikdoms of Oman, namely Abu Dhabi, Ajman, Dubai, Kalba, Ras al Khaimah, Sharjah and Umm al Quaiwain) (protected states), the New Hebrides (a protected state), Canton Island (a protected state), the Cameroons Trust Territory, Tanganyika (a trust territory) and Togoland Trust Territory: see the British Protectorates, Protected States and Protected Persons Order 1949, SI 1949/140 (amended by SI 1952/457; SI 1952/1417; SI 1953/1773; SI 1958/259; SI 1958/590; SI 1960/1366; SI 1961/2325; SI 1962/1333); the British Protectorates, Protected States and Protected Persons Order 1965, SI 1965/1864 (amended by SI 1967/247; SI 1967/1271); the British Protectorates, Protected States and Protected Persons Order 1969, SI 1969/1832; the British Protectorates, Protected States and Protected Persons Order 1974, SI 1974/1895; the British Protectorates, Protected States and Protected Persons Order 1978, SI 1978/1026; and the British Protectorates, Protected States and Protected Persons Order

1982, SI 1982/1070 (amended by SI 1983/1699). See also note 1 *supra*. It should not be assumed that the territory of the protectorate, protected state or trust territory was identical with the territory which now bears the relevant name (eg there was both a Kenya Colony and a Kenya Protectorate; and likewise for Sierra Leone).

14 See the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 10; and paras 74-76 *post*. As to British citizens and citizenship see paras 8, 23-43 *ante*; as to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 *ante*; and as to British overseas citizens and citizenship see paras 8, 58-62 *ante*.

15 As to citizenship of the United Kingdom and colonies see paras 16-21 *ante*.

16 *Motala v A-G* [1992] 1 AC 281, [1991] 4 All ER 682, HL (a case involving the Northern Rhodesia (Zambia) Protectorate where it was further held that the citizenship of the United Kingdom and colonies was also lost by the acquisition of Zambian nationality).

UPDATE

72 In general

NOTE 10--1955 Act s 1 further amended: European Communities (Employment in the Civil Service) Order 2007, SI 2007/617.

NOTE 13--SI 1982/1070 further amended: SI 2009/1892.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(8) BRITISH PROTECTED PERSON STATUS/73. The Solomon Islands.

73. The Solomon Islands.

On 7 July 1978 the former Solomon Islands protectorate became an independent Commonwealth country¹. Those who before that day were British protected persons by virtue of a connection with the protectorate² continued to be British protected persons unless on that day they became citizens of the Solomon Islands³, or were then citizens of the United Kingdom and colonies⁴. If a child was born during the period 7 July 1978 to 6 July 1980, inclusive, to a man⁵ born in the Solomon Islands who had remained a British protected person, the child was a British protected person if he did not acquire citizenship of the United Kingdom and colonies or any other nationality at birth⁶. In either case, the status of British protected person was lost on acquisition of citizenship of the Solomon Islands or the United Kingdom and colonies⁷ or on possession (on or after 7 July 1980) of any other nationality⁸.

On 7 July 1980 citizens of the United Kingdom and colonies with a connection with the Solomon Islands⁹, and children fathered by such persons who were born between 7 July 1978 and 6 July 1980, inclusive, with citizenship of the United Kingdom and colonies by descent only¹⁰, lost their citizenship of the United Kingdom and colonies and became British protected persons unless they then had any other nationality¹¹. They lost that status on acquisition of citizenship of the Solomon Islands or the United Kingdom and colonies, or if they acquired any other nationality¹².

From 16 August 1978 to 31 December 1982¹³, the wife of a Solomon Islands British protected person¹⁴ could on application be registered as a British protected person, provided she was not a citizen of the Solomon Islands; she lost that status on becoming a citizen of the Solomon Islands or the United Kingdom and colonies, or on or after 7 July 1980 upon acquiring another nationality, but only if her husband also lost it¹⁵. Solomon Islanders could also take advantage of the then existing provisions for registration of stateless persons as British protected persons¹⁶.

1 See the Solomon Islands Act 1978 ss 1, 2(1) (s 2(1) repealed). In the normal way of independence legislation, the Act laid down the circumstances in which persons would cease to be citizens of the United Kingdom and colonies as a result of independence: see para 20 ante. As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

2 A person had a connection with the Solomon Islands protectorate if he or his father: (1) was born in the Solomon Islands; or (2) while resident in the Solomon Islands, became a citizen of the United Kingdom and colonies by naturalisation or registration: see *ibid* s 3(1). A woman had such a connection if she acquired citizenship of the United Kingdom and colonies on the ground of marriage to such a person: see s 3(2). However, nobody had such a connection if: (a) he, his father or his father's father was born in the United Kingdom or a colony or associated state (as at 7 July 1978), or became a British subject by annexation of any territory of a colony or associated state (as at 7 July 1978), or was naturalised or registered as a citizen of the United Kingdom and colonies in the United Kingdom or a colony or associated state (as at 7 July 1978), or was registered by a High Commissioner under the British Nationality Act 1948 s 8(2) (now repealed) or s 12(7) (now repealed) (although women registered under s 6(2) (now repealed) on the ground of marriage were not excluded); or (b) his father or father's father would, if living immediately before 1 January 1949, have become a person naturalised in the United Kingdom and colonies under the British Nationality Act 1948 s 32(6) (now repealed) by virtue of having enjoyed the privileges of naturalisation in a colony or associated state (as at 7 July 1978): see the Solomon Islands Act 1978 s 3(3)-(5).

3 See the Solomon Islands Independence Constitution, Solomon Islands Independence Order 1978, SI 1978/783, Schedule, Ch III. There was also a local Citizenship Ordinance 1978 (No 7).

4 See the Solomon Islands Act 1978 s 4(1).

5 A man is the father only of his legitimate children, but a child legitimated by subsequent marriage of his parents is treated as if he had been born legitimate: see *ibid* s 6(2) (substituted by the British Nationality Act 1981 s 52(6), Sch 7); and the Solomon Islands Act 1978 s 6(3) (amended by the British Nationality Act 1981 Sch 7). See also para 26 notes 6, 7 ante.

6 See the Solomon Islands Act 1978 s 4(2). A person had or acquired another nationality if he was or became a citizen of an independent Commonwealth country, or of a foreign country (ie a country other than the United Kingdom, a colony, an independent Commonwealth country, a protectorate, protected state, mandated territory or trust territory) or of the Republic of Ireland: see the Solomon Islands Act 1978 s 6(1), (2) (as originally enacted); and the British Nationality Act 1948 s 32(1) (now repealed).

7 From 1 January 1983, this also applies on the acquisition of British citizenship, British overseas territories citizenship, British overseas citizenship, or British national (overseas) status: see the British Nationality Act 1981 s 51(3)(a) (amended by the British Nationality (Falkland Islands) Act 1983 s 4(3); the British Overseas Territories Act 2002 ss 1(1)(b), 5, Sch 1 para 6; and the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(9)). As to British citizens and citizenship see paras 8, 23-43 ante; as to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 ante; as to British overseas citizens and citizenship see paras 8, 58-62 ante; and as to British national (overseas) status see paras 8, 63-65 ante.

British protected person status was not inconsistent with citizenship of the United Kingdom and colonies, at least in the case of a person who qualified for both at birth; such a person could be both a British protected person and a citizen of the United Kingdom and colonies simultaneously until the acquisition of citizenship of the Solomon Islands or another nationality, at which point both would be lost: *Motala v A-G* [1992] 1 AC 281, [1991] 4 All ER 682, HL; and see para 72 text and note 16 ante.

8 See the Solomon Islands Act 1978 s 4(3). A British protected person who was the wife of a British protected person did not lose that status, either on 7 July 1978 or thereafter, by reason of other national status unless her husband did so: see s 5(2). As to the operation of an analogous automatic loss provision under the British Protectorates, Protected States and Protected Persons Order 1969, SI 1969/1832 (now revoked), and the Uganda Independence Act 1962, see *R v Secretary of State for the Home Department, ex p Thakrar* [1974] QB 684, [1974] 2 All ER 261, CA.

9 See note 2 supra.

10 See para 19 note 6 ante.

11 See the Solomon Islands Act 1978 s 2(2)-(4).

12 See *ibid* s 4(4).

13 Ie between the dates on which the British Protectorates, Protected States and Protected Persons Order 1978, SI 1978/1026, came into force and after which it was superseded by the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070.

14 Ie a man who at the date of the wife's application was a British protected person under the Solomon Islands Act 1978.

15 See the British Protectorates, Protected States and Protected Persons Order 1978, SI 1978/1026, art 7 (lapsed).

16 See *ibid* arts 7(3), 10 (lapsed). As to provisions for stateless persons see now the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 7 (as amended); and para 75 post.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(8) BRITISH PROTECTED PERSON STATUS/74.
Retention of British protected person status.

74. Retention of British protected person status.

A person¹ who on 31 December 1982² was a British protected person³ continues thereafter to be a British protected person⁴; save that a person who is a British protected person by virtue of connection⁵ with a former protectorate⁶, a former trust territory⁷ or a former Arabian protectorate⁸, or by registration as the wife of a Solomon Islands British protected person⁹ or as the stateless child of a British protected person¹⁰, loses British protected person status if he acquires British citizenship¹¹, British overseas territories citizenship¹², British overseas citizenship¹³ or another nationality¹⁴.

1 Ie other than a Solomon Islander. As to Solomon Islanders see para 73 ante.

2 Ie immediately before the commencement of the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, which came into operation on 1 January 1983: see art 1.

3 Ie by virtue of the British Protectorates, Protected States and Protected Persons Order 1978, SI 1978/1026 (now lapsed), which continued the British protected person status of those who had it under previous orders (see para 72 note 1 ante).

4 See the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 6.

5 From 16 August 1978, when the British Protectorates, Protected States and Protected Persons Order 1978, SI 1978/1026 (now lapsed) came into force, it was no longer possible to acquire British protected person status by virtue of such a connection, save in the case of a connection with Brunei or in the case of wives of Solomon Islanders (as to whom see para 73 ante). Citizens or nationals of Brunei ceased to be British protected persons on 1 January 1984: see the British Nationality (Brunei) Order 1983, SI 1983/1699, arts 1, 2.

6 Ie the Bechuanaland, Gambia, Kenya, Nigeria, Nyasaland, Sierra Leone and Uganda Protectorates, Northern Rhodesia and the Northern Territories of the Gold Coast: British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 2(1), Schedule Pt I.

7 Ie Tanganyika, the Cameroons under United Kingdom trusteeship and Togoland under United Kingdom trusteeship: *ibid* art 2(1), Schedule Pt II.

8 Ie Kamaran and the Protectorate of South Arabia (previously Aden): *ibid* art 2(1).

9 Ie under the British Protectorates, Protected States and Protected Persons Order 1978, SI 1978/1026, art 7 (lapsed): see para 73 ante.

10 Ie under *ibid* art 10 (lapsed) or the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 7 (as amended): see paras 73 ante, 75 post.

11 As to British citizens and citizenship see paras 8, 23-43 ante.

12 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 ante.

13 As to British overseas citizens and citizenship see paras 8, 58-62 ante.

14 British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 10 (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). For the purposes of the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070 (as amended), a person has or acquires another nationality if he becomes a citizen of a Commonwealth country (see para 11 note 16 ante) or of a foreign country (see para 6 note 15 ante) or of the Republic of Ireland: art 2(3). As to the operation of an analogous automatic loss provision under the British Protectorates, Protected States and Protected Persons Order 1969, SI 1969/1832 (now revoked), and the Uganda Independence Act 1962, see *R v Secretary of State for the Home Department, ex p Thakrar* [1974] QB 684, [1974] 2 All ER 261, CA.

British protected person status was not inconsistent with citizenship of the United Kingdom and colonies, at least in the case of a person who qualified for both at birth; such a person could be both a British protected person and a citizen of the United Kingdom and colonies simultaneously until the acquisition of citizenship of another country, at which point both would be lost: *Motala v A-G* [1992] 1 AC 281, [1991] 4 All ER 682, HL; and see para 72 text and note 16 ante. As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(8) BRITISH PROTECTED PERSON STATUS/75.
Acquisition of British protected person status.

75. Acquisition of British protected person status.

A person born in the United Kingdom¹ or a British overseas territory² on or after 1 January 1983³, who would otherwise be born stateless, is a British protected person if his father or mother⁴ was a British protected person at the time he was born⁵. A person born⁶ outside the United Kingdom and the British overseas territories is entitled, on application⁷, to be registered as a British protected person if: (1) he is and always has been stateless; and (2) either his father or his mother was a British protected person at the time he was born⁸; and (3) he was in the United Kingdom or any British overseas territory or territories at the beginning of the three year period ending with the date of application and has not during that period been absent from both the United Kingdom and the British overseas territory or territories for more than 270 days⁹. A person so registered¹⁰ ceases to be a British protected person upon acquiring British citizenship¹¹, British overseas territories citizenship¹², British overseas citizenship¹³ or another nationality¹⁴.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to British overseas territories (formerly known as dependent territories) see para 44 note 1 ante.

3 I.e. the date of the commencement of the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070 (as amended): see para 74 note 2 ante.

4 The provisions of *ibid* art 7 (as amended) apply to an illegitimate child if the relevant parent is the mother: see art 7(4). A person legitimated by the subsequent marriage of his parents, according to the law of the father's domicile at the time of the marriage, is treated for the purpose of determining whether he is a British protected person as if he had been born legitimate: see art 3. In the case of a posthumous child, the reference to the status of the father or mother at the time of the birth is to be construed as a reference to the status of the parent in question at the time of that parent's death; if the parent died before 1 January 1983 and the child was born after that date, the parent is taken to have the status he would have had if he had died after that date: see art 4. See also para 26 notes 6, 7 ante. As to the law of domicile see CONFLICT OF LAWS.

5 See *ibid* art 7(1) (amended by virtue of the British Overseas Territories Act 2002 s 1(2)). For these purposes, a person born aboard a registered ship, hovercraft or aircraft is deemed to have been born in the place where the ship, hovercraft or aircraft was registered, and a person born aboard an unregistered ship, hovercraft or aircraft of the government of any country is deemed to have been born in that country, provided that he is only deemed to have been born in the United Kingdom or a British overseas territory if he was born

stateless: see the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 8(1), (3) (art 8(1) amended by virtue of the British Overseas Territories Act 2002 s 1(2)). There is a rebuttable presumption that a new-born infant found abandoned was born in the territory in which he was so found: see the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 8(2).

6 le whether before or after 1 January 1983.

7 In the case of a person who is under the age of 18 or who is of unsound mind, the application may be made by his parent or guardian or any person who has assumed responsibility for his welfare: see the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, arts 2(2), 7(3). As to applications generally see para 79 post.

8 See note 4 *supra*.

9 See the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 7(2) (amended by virtue of the British Overseas Territories Act 2002 s 1(2)). If, in the special circumstances of any particular case, the Secretary of State thinks fit, he may treat the requirement in head (3) in the text as having been fulfilled although the number of days on which the person was absent from both the United Kingdom and the British overseas territories exceeded the number mentioned: see the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 7(5) (amended by virtue of the British Overseas Territories Act 2002 s 1(2)). As to the Secretary of State see para 2 *ante*. As to the exercise of discretion see the British Nationality Act 1981 s 44; and para 2 *ante*.

A person registered under the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 7 (as amended) is a British protected person by registration as from the date on which he is registered: art 9.

10 It seems that this does not apply to a person who is a British protected person by birth under *ibid* art 7(1) (as amended) (see the text and note 5 *supra*).

11 As to British citizens and citizenship see paras 8, 23-43 *ante*.

12 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 *ante*.

13 As to British overseas citizens and citizenship see paras 8, 58-62 *ante*.

14 See the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 10 (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). British protected person status was not, however, inconsistent with the simultaneous possession of citizenship of the United Kingdom and colonies: *Motala v A-G* [1992] 1 AC 281, [1991] 4 All ER 682, HL; and see para 72 text and note 16 *ante*. See also para 74 note 14 *ante*. As to citizenship of the United Kingdom and colonies see paras 16-21 *ante*.

UPDATE

75 Acquisition of British protected person status

TEXT AND NOTES--SI 1982/1070 art 3 substituted, art 4 amended, art 7 further amended: SI 2009/1892.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(8) BRITISH PROTECTED PERSON STATUS/76.
Renunciation of British protected person status.

76. Renunciation of British protected person status.

A person of full age and capacity¹ who is a British protected person², and either has or satisfies the Secretary of State³ that he will after renunciation acquire British citizenship⁴, British overseas territories citizenship⁵, British overseas citizenship⁶, or another nationality⁷, may renounce his British protected person status by declaration⁸, upon registration of which he

ceases to be a British protected person⁹. However, if he does not acquire such a citizenship or another nationality within six months, he is and is deemed to have remained a British protected person notwithstanding the registration¹⁰.

1 For these purposes, a person is of full age if he has attained the age of 18 years and is of full capacity if he is not of unsound mind: British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 2(2).

2 He by virtue of the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070 (as amended): see paras 74-75 ante. There is no provision for renunciation by those who are British protected persons by virtue of the Solomon Islands Act 1978: see para 73 ante.

3 As to the Secretary of State see para 2 ante.

4 As to British citizens and citizenship see paras 8, 23-43 ante.

5 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 ante.

6 As to British overseas citizens and citizenship see paras 8, 58-62 ante.

7 See also para 74 note 14 ante.

8 See the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 11(1) (amended by SI 1983/1699; and by virtue of the British Overseas Territories Act 2002 s 2(3)).

9 See the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 11(2). The Secretary of State may withhold registration of a declaration made during wartime: see art 11(3).

10 See *ibid* art 11(2). As to the automatic loss of British protected person status on acquisition of British or other nationality see the Solomon Islands Act 1978 s 4 (as amended); the British Protectorates, Protected States and Protected Persons Order 1982, SI 1982/1070, art 10 (as amended); and paras 72-75 ante. See also *R v Secretary of State for the Home Department, ex p Thakrar* [1974] QB 684, [1974] 2 All ER 261, CA (analogous automatic loss provision); *Motala v A-G* [1992] 1 AC 281, [1991] 4 All ER 682, HL (British protected person status not inconsistent with simultaneous possession of citizenship of the United Kingdom and colonies).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(9) MISCELLANEOUS MATTERS/77. Estoppel, legitimate expectation and unfairness.

(9) MISCELLANEOUS MATTERS

77. Estoppel, legitimate expectation and unfairness.

It is a general principle of law that an excess of statutory power cannot be validated by the operation of an estoppel¹. Thus, a public authority can deny the validity of its own earlier conduct². However, it appears that an assurance or representation of fact as to a person's citizenship status made by a public official, whose duties include such matters, to the person affected³, and relied upon by that person to his detriment, can in certain circumstances preclude the Crown from denying such citizenship, even if the assurance or representation was given otherwise than in a manner or form prescribed by law⁴.

If, in the exercise of its discretion, the Crown resiles from an earlier assurance as to the practice which it would follow, or the grant or recognition of citizenship status, such a decision may be open to challenge on the grounds that it is a breach of a legitimate expectation that the assurance would be honoured⁵, or is otherwise unfair⁶.

1 No public authority can, by making an assurance or representation, either extend the scope of its statutory powers or debar itself and its successors from exercising a statutory discretion or performing a statutory duty in the future: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 23; ESTOPPEL vol 16(2) (Reissue) paras 960, 1053. As to estoppel generally see ESTOPPEL. As to the private law concept of estoppel and the public law concept of a legitimate expectation created by a public authority see eg *R v East Sussex County Council, ex p Reprotech (Pebsham) Ltd* [2002] UKHL 8, [2002] 4 All ER 58, HL. See also note 5 infra.

2 See eg *Minister of Agriculture and Fisheries v Matthews* [1950] 1 KB 148, [1949] 2 All ER 724; *Rhyl UDC v Rhyl Amusements Ltd* [1959] 1 All ER 257, [1959] 1 WLR 465.

3 Or, in the case of a child, to his parent or guardian. See also note 4 infra.

4 *Gowa v A-G* (1984) 129 Sol Jo 131, CA; affd on different grounds [1985] 1 WLR 1003, HL. See also ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 23.

Both the scope and the existence of such a principle are problematic. In *Gowa v A-G* supra an application was made to the Governor of Tanganyika in 1951 for registration of seven minor children as citizens of the United Kingdom and colonies (under the discretionary power of the British Nationality Act 1948 s 7(1) (now repealed)). A responsible official stated, in a letter, that they were already citizens of the United Kingdom and colonies; accordingly no further action was taken on the applications. The statement was erroneous; but by the time the Crown asserted the true position, they were no longer eligible for registration (being no longer minors). The Court of Appeal held by a majority that the Crown was estopped by the letter from denying that they were citizens of the United Kingdom and colonies. However, the decision is of limited impact. The Crown conceded that but for the mistake the children would have been registered. If the effect of the estoppel was to treat the children as having been granted citizenship when they ought to have been, the Court of Appeal was not sanctioning any extension or amendment of statutory powers or violating the principles set out in the text and note 1 supra. The position would be otherwise if the effect of the estoppel was to treat the misstatement in the letter as true, since there was no statutory or other lawful support for the statement; it seems that *Gowa v A-G* supra would not extend to cases of misstatement of a status which depends upon satisfaction of mandatory criteria: see *Christodoulidou v Secretary of State for the Home Department* [1985] Imm AR 179 at 182-183, IAT. The House of Lords in *Gowa v A-G* supra affirmed the Court of Appeal's decision on a different basis (holding that the undetermined application remained pending and there was still power to grant the registration despite intervening changes of fact and law); the 'difficult' estoppel point was expressly left open: *Gowa v A-G* [1985] 1 WLR 1003 at 1005, HL, per Lord Roskill, and at 1010 per Lord Griffiths. In the light of this House of Lords' judgment, Mann J declined to express a view on whether the concept of estoppel existed in public law: see *R v Immigration Appeal Tribunal, ex p Kandemir* [1986] Imm AR 136 at 143 (on the facts in this case there was no detriment). Both the Home Office and the Immigration Appeal Tribunal have since accepted that, in the light of *Gowa v A-G* supra, the doctrine of estoppel could in principle apply to the grant and recognition of citizenship status where an assurance was given in the exercise of a discretionary power: see *Vun Liew v Secretary of State for the Home Department* [1989] Imm AR 62, IAT (on the facts in this case the scope of the assurance was too narrow to sustain the claim); *R v Secretary of State for the Home Department, ex p Ram* [1979] 1 All ER 687, [1979] 1 WLR 148, DC (mistaken grant of indefinite leave to remain). However, it appears that another government department is not able to bind the Home Secretary so as to fetter his discretion: *R v Immigration Appeal Tribunal, ex p Ahluwalia* [1979-80] Imm AR 1 at 7-8.

5 As to legitimate expectations see JUDICIAL REVIEW vol 61 (2010) PARA 649. The estoppel argument and the legitimate expectation argument have been said to be 'substantially the same': *Oloniluyi v Secretary of State for the Home Department* [1989] Imm AR 135 at 146, CA, per Dillon LJ. Cf *R v East Sussex County Council, ex p Reprotech (Pebsham) Ltd* [2002] UKHL 8, [2002] 4 All ER 58, HL (there is an analogy between private law estoppel and the public law concept of a legitimate expectation created by a public authority, but it is no more than an analogy). See also *Vun Liew v Secretary of State for the Home Department* [1989] Imm AR 62, IAT (legitimate expectation argument rejected for the same reasons as the estoppel argument); *R v Secretary of State for the Home Department, ex p Ram* [1979] 1 All ER 687, [1979] 1 WLR 148, DC (grant of indefinite leave to remain not vitiated by immigration officer's mistake where no deception).

6 See JUDICIAL REVIEW vol 61 (2010) PARA 648. As to procedural fairness see JUDICIAL REVIEW vol 61 (2010) PARA 625 et seq.

UPDATE

77-82 Miscellaneous Matters

SI 1982/986 replaced by British Nationality (General) Regulations 2003, SI 2003/548 (amended by SI 2003/3158, SI 2005/2114, SI 2005/2785, SI 2007/3137, SI 2010/785).

77 Estoppel, legitimate expectation and unfairness

NOTE 6--See *R (on the application of Rechachi) v Secretary of State for the Home Department* [2006] EWHC 3513 (Admin), [2006] All ER (D) 341 (Dec) (revised policy for successful asylum applications, providing for exceptional cases, lawful).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(9) MISCELLANEOUS MATTERS/78. Passports and proof of national status.

78. Passports and proof of national status.

Passports are issued under the royal prerogative¹ in the discretion of the Secretary of State²; they are the property of the Crown, not of the passport-holder³. A British passport does not confer citizenship⁴; it is merely evidence of it, and of the right to claim the Crown's protection⁵. However, a British citizen⁶ is required to prove his status if any question about it arises for the purposes of immigration law⁷, and on arrival in the United Kingdom⁸ this must generally be done by production of a United Kingdom passport describing him as a British citizen⁹. A person seeking to enter the United Kingdom and claiming to have the right of abode there may also prove that he has that right by production of a certificate of entitlement certifying that he has the right of abode¹⁰. There is an appeal against refusal of a certificate of entitlement¹¹ but not against refusal of a passport; however, refusal of a passport is subject to judicial review¹².

In accordance with international obligations¹³, travel documents may be issued to lawfully resident refugees¹⁴ and stateless persons¹⁵.

Provision is made for the charging of fees for travel documents and documents of identity¹⁶.

1 As to the royal prerogative see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 367 et seq; CROWN AND ROYAL FAMILY vol 12(1) (Reissue) para 46 et seq.

2 See *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Everett* [1989] QB 811, [1989] 1 All ER 655, CA; *Secretary of State for the Home Department v Lakdawalla* [1972] Imm AR 26, IAT. Cf *Kent v Dulles* 357 US 116 (1958) and *Sawhney v Assistant Passport Officer, Government of India* (1967) Times, 15 April, from which it appears that in the United States and India respectively travel, and hence a passport enabling one to do so, are matters of right. In the United Kingdom passports are the responsibility of the Secretary of State for the Home Department, but the Secretary of State for Foreign and Commonwealth Affairs remains responsible for passport applications made abroad: see para 1 ante. As to the Secretary of State see para 2 ante. British passports issued in the common format agreed between member states of the European Community do not confer or evidence any different national status from the previous British passport format, and are still issued by the United Kingdom authorities rather than by any special Community authority.

3 *Suwalsky v Trustee and Official Receiver* [1928] B & CR 142.

4 Thus if a passport is issued showing a person to have a status he does not in fact hold, it may be withdrawn and cannot be relied on to assert that status, since the conditions of entitlement to the status are a matter of law which the person does not fulfil: *Christodoulidou v Secretary of State for the Home Department* [1985] Imm AR 179, IAT; *Secretary of State for the Home Department v Gold* [1985] Imm AR 66, IAT (citizens of the United Kingdom and colonies issued with passports erroneously showing them to have the right of abode, which would have constituted them British citizens on 1 January 1983: see paras 22, 24 ante). See, however, para 77 ante.

5 Whether such protection will be afforded is a matter for the Crown's discretion; it is not a right: *China Navigation Co Ltd v A-G* [1932] 2 KB 197, CA. In the case of a person who, as an alien, does not in fact have that right, acquisition of a passport by misrepresentation that he has British nationality extends his claim to protection, and hence his local allegiance, when he leaves the United Kingdom, as long as he holds the passport, even though, presumably, were the misrepresentation discovered the claim to protection would be regarded as unfounded: *Joyce v DPP* [1946] AC 347, [1946] 1 All ER 186, HL.

6 As to British citizens and citizenship see paras 8, 23-43 ante.

7 See the Immigration Act 1971 s 3(8) (as amended); and para 84 post. As to the burden of proof see *Re Bamgbose* [1990] Imm AR 135, CA. It has been held that the production of a genuine United Kingdom passport, issued to the person who is seeking to enter the country and describing him as a British citizen, discharges the burden of proof of citizenship, and the burden on the Secretary of State to prove that it was obtained by fraud is high: see *R v Secretary of State for the Home Department, ex p Obi* [1997] Imm AR 420, [1997] 1 WLR 1498.

8 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

9 The requirement to present a British passport to British authorities in order to be allowed to return home is a relative novelty; passports being formerly thought of as 'intended to be presented to the Governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries': *R v Brailsford* [1905] 2 KB 730. Only a full British passport (or a certificate of entitlement) will suffice: *Minta v Secretary of State for the Home Department* [1992] Imm AR 380, CA (where the Court of Appeal confirmed that it is inappropriate for the court on a judicial review application to assess the factual validity of a claim to citizenship). As to the requirements for admission see para 93 et seq post. However, where a person on arrival produces an ostensibly valid passport or certificate of entitlement, the burden lies on the Secretary of State to prove that the person is not entitled to it: *Aboagye v Immigration Officer, Newhaven* (16 September 1991, unreported) (8144), IAT (burden not discharged). See also note 7 supra.

Formerly production of a passport describing a person as a citizen of the United Kingdom and colonies with the right of abode would suffice, but this status ceased to exist on 1 January 1983 and passports issued before that date will now have expired. As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

10 See the Immigration Act 1971 s 3(9) (as substituted); and para 85 post. As to the right of abode see para 14 ante. As to certificates of entitlement see further para 93 post. Note that a certificate of patriality issued under the Immigration Act 1971 and in force immediately before 1 January 1983 (ie the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante) has effect after that date as if it were a certificate of entitlement, unless the holder ceases to have right of abode in the United Kingdom on that date: see the British Nationality Act 1981 s 39(8) (amended by the Immigration Act 1988 s 3(3)).

A person who is a British citizen by operation of law might prefer to obtain a certificate of entitlement if, eg, he has another nationality which would be jeopardised by a claim to United Kingdom government protection which a passport would involve. Commonwealth citizens without British citizenship who had the right of abode before 1 January 1983 and have retained it (see para 14 ante) can prove it only by production of a certificate of entitlement, not being entitled to a United Kingdom passport. As to Commonwealth citizens see para 11 ante.

11 The appeal lies to an adjudicator with a further appeal, with leave, to the immigration appeal tribunal. As to appeals see para 173 et seq post.

12 See *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Everett* [1989] QB 811, [1989] 1 All ER 655, CA; *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, [1984] 3 All ER 935, HL. As to judicial review generally see JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq.

13 See the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906); Convention relating to the Status of Stateless Persons (New York, 28 September 1954; TS 41 (1960); Cmd 1098) arts 27, 28, Schedules.

14 As to the meaning of 'refugee' see para 239 post. As to refugees and asylum see para 238 et seq post.

15 These documents are issued by the Home Office to those who have been recognised as refugees or stateless under the Conventions mentioned in note 13 supra. The obligation in international law gives no right in domestic law; but see eg *R v Chief Immigration Officer, Gatwick Airport, ex p Harjendar Singh* [1987] Imm AR 346 at 357. In a suitable case refusal of a travel document might well be amenable to judicial review. In addition to these travel documents, as a matter of discretion, certificates of identity may be issued to persons resident here who have been unreasonably refused passport facilities by their own countries (or, in some cases, who cannot reasonably be expected to apply for them) and who need to travel.

16 The Secretary of State may, with the approval of the Treasury, make regulations prescribing fees to be paid in connection with applications to him for travel documents: Immigration and Asylum Act 1999 s 27(1). If a fee is prescribed in connection with an application of a particular kind, no such application is to be entertained by the Secretary of State unless the fee has been paid in accordance with the regulations: s 27(2). In respect of any period before these provisions came into force (ie 11 November 1999), the Secretary of State is deemed always to have had power to impose charges in connection with applications to him for travel documents or the issue by him of travel documents: s 27(3). 'Travel document' does not include a passport: s 27(4). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517. The regulations that have been made under s 27 provide that: (1) a fee of £28 is to be charged for a travel document issued in accordance with the Conventions mentioned in note 13 supra or for a document of identity issued in the United

Kingdom to a person who is not a British citizen which enables the holder to make one journey out of the United Kingdom; and (2) a fee of £67 is to be charged in connection with an application to the Secretary of State for any other Home Office travel document: see the Travel Documents (Fees) Regulations 1999, SI 1999/3339. As from 10 September 2002, however, there is an exemption from the fee specified in head (2) *supra* for an application which is stated to have been made in order to enable the applicant to participate in a project operated or approved by the Secretary of State for the purpose of enabling him to make a single trip to a country outside the United Kingdom in order to assist the reconstruction of that country or to decide whether to resettle there: see the Travel Documents (Fees) Regulations 1999, SI 1999/3339 (amended by SI 2002/2155).

The power to make regulations under the Immigration and Asylum Act 1999 is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and any such instrument may contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate, may make different provision for different cases or descriptions of case, and may make different provision for different areas: s 166(1), (2).

UPDATE

77-82 Miscellaneous Matters

SI 1982/986 replaced by British Nationality (General) Regulations 2003, SI 2003/548 (amended by SI 2003/3158, SI 2005/2114, SI 2005/2785, SI 2007/3137, SI 2010/785).

78 Passports and proof of national status

TEXT AND NOTES--As to passports and the right to travel to and enter foreign countries, see PARA 78A.

Where it appears to the Secretary of State that a person on whom a requirement may be imposed under the following provisions may have information in his possession which could be used either for verifying information provided to the Secretary of State for the purposes of, or in connection with, an application for the issue of a passport, or for determining whether to withdraw an individual's passport, the Secretary of State may require that person to provide him with the information: Identity Cards Act 2006 s 38(1). The persons on whom such a requirement may be imposed are (1) a minister of the Crown; (2) a government department; (3) the National Assembly for Wales; or (4) any person not falling within heads (1)-(3) who is specified for these purposes in an order made by the Secretary of State: s 38(3). As to the persons so specified see the Identity Cards Act 2006 (Information and Code of Practice on Penalties) Order 2009, SI 2009/2570, art 5. The persons who may be specified in an order under head (4) of the text include any person who carries out functions conferred by or under an enactment that fall to be carried out on behalf of the Crown: 2006 Act s 38(4). The power of the Secretary of State to make an order specifying a person as a person on whom a requirement may be imposed under s 38 includes power to provide (i) that his duty to provide the information that he is required to provide is owed to the person imposing it; and (ii) that the duty is enforceable in civil proceedings for an injunction or for any other appropriate remedy or relief: s 38(5)(a), (b)(i), (iii). It is the duty of any such person who has the information in his possession to comply with the requirement within whatever period is specified in the requirement: s 38(2). As to the person to whom the duty is owed, see SI 2009/2570 arts 6, 7. The Secretary of State may, in such cases (if any) as he thinks fit, make payments to a person providing such information in respect of the provision of the information: 2006 Act s 38(6). As to the offence of possessing or making false identity documents see ss 25 and 26; and REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 527A.

NOTE 16--Immigration and Asylum Act 1999 s 27 repealed: Immigration, Asylum and Nationality Act 2006 Sch 2 para 3, Sch 3. SI 1999/3339 lapsed on repeal of 1999 Act s 27. As to the fees for passport applications, see the Consular Fees Order 2009, SI 2009/700 (amended by SI 2009/1745).

Reference to 1999 Act s 166(1), (2) should be to s 166(1), (3), (6).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(9) MISCELLANEOUS MATTERS/78A. Passports and the right to travel.

78A. Passports and the right to travel.

A passport may be granted by the Crown at any time to enable a British subject to travel¹ to and enter foreign countries². In form a passport is a request in the Queen's name to afford the holder free passage and any necessary assistance. A passport may also be revoked or impounded in the discretion of the Crown³.

Provided at least that he is a British citizen, the holder of a passport enjoys the protection of the Crown when abroad⁴. An alien who has been resident in the United Kingdom and who travels abroad with a British passport likewise enjoys the protection of the Crown and extends his duty of local allegiance beyond the time of his departure from the United Kingdom⁵. A conspiracy to obtain a passport by false or fraudulent representations tending to produce a public mischief has been held to constitute an indictable offence⁶.

1 The possession of a valid passport may be made a condition of a contract of carriage by the carrier.

2 A British citizen's right at common law to leave and return to the United Kingdom is not dependent on the possession of a British passport: Report of the Committee Privy Councillors appointed to inquire into the Recruitment of Mercenaries 1976 (Cmnd 6569) para 17. However, the possession of a passport is now almost always required by the authorities to enable a person to enter a country. A passport would not be available to enable its holder to travel in an enemy country in time of war.

3 A passport issued on behalf of the Crown remains the property of the Crown. If the holder becomes bankrupt, the passport is the property of the Crown and not of the bankrupt: *Re Suwalsky, Suwalsky v Trustee and Official Receiver* [1928] B & CR 142, 4 BILC 780. Most frequently passports are refused, withheld or revoked because of the risk that the holder will leave the country in order to evade justice: 764 HC Official Report (5th series), 13 May 1968, col 183. The issue of a passport is only refused in exceptional circumstances: 102 HC Official Report (6th series), 21 October 1986, written answers, col 802. As to cases in which a passport has been denied on political grounds see 764 HC Official Report (5th series), 14 May 1968, col 1041. As to the right of the police to retain the passport of a person suspected of a criminal offence see *Ghani v Jones* [1970] 1 QB 693, [1969] 3 All ER 1700, CA.

4 There appears, however, to be no judicial means by which the Crown may be compelled to exercise its protection on behalf of a passport holder: see *China Navigation Co Ltd v A-G* [1932] 2 KB 197, 4 BILC 785, CA.

5 *Joyce v DPP* [1946] AC 347, [1946] 1 All ER 186, 3 BILC 51, HL. Thus, if such an alien were to adhere to the Queen's enemies, he would be guilty of treason.

6 *R v Brailsford* [1905] 2 KB 730, 4 BILC 769. However, obtaining a passport by means of false declarations might be an offence apart from conspiracy: see *R v Brailsford* supra at 737 per Lord Alverstone CJ. As to forgery of a passport see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 351.

UPDATE

77-82 Miscellaneous Matters

SI 1982/986 replaced by British Nationality (General) Regulations 2003, SI 2003/548 (amended by SI 2003/3158, SI 2005/2114, SI 2005/2785, SI 2007/3137, SI 2010/785).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(9) MISCELLANEOUS MATTERS/79. Applications for naturalisation and registration; oaths of allegiance.

79. Applications for naturalisation and registration; oaths of allegiance.

Any application for registration as a British citizen¹, British overseas territories citizen², British overseas citizen³ or British subject⁴, or for a certificate of naturalisation as a British citizen⁵ or a British overseas territories citizen⁶, must be made to the appropriate authority⁷ and must satisfy certain requirements⁸. All applications must: (1) be made in writing; (2) state the name, address and date and place of birth of the applicant; and (3) contain a declaration that the particulars stated are true⁹. Further details are required, depending on the type of application¹⁰. An application may be made on behalf of someone not of full age or capacity by his father or mother or any person who has assumed responsibility for his welfare¹¹.

A person may not be registered under any provision of the British Nationality Act 1981 as a citizen of any description or as a British subject, and a certificate of naturalisation may not be granted to a person under any provision of that Act, unless:

- 128 (a) any fee payable in connection with the registration or, as the case may be, the grant of the certificate has been paid¹²; and
- 129 (b) the person concerned has within the prescribed time taken an oath of allegiance¹³.

Any provision of the British Nationality Act 1981 which provides for a person to be entitled to registration as a citizen of any description or as a British subject has effect subject to the provisions relating to fees and the taking of an oath of allegiance¹⁴.

A person registered under any provision of the British Nationality Act 1981 acquires the relevant citizenship or status as from the date on which he is so registered¹⁵, and a person to whom a certificate of naturalisation as a British citizen or as a British overseas territories citizen is granted is a citizen of that description as from the date on which the certificate is granted¹⁶.

1 As to British citizens and citizenship see paras 8, 23-43 ante. As to the acquisition of British citizenship by registration see paras 27-36 ante.

2 As to British overseas territories citizens and citizenship (formerly British dependent territories citizens and citizenship) see paras 8, 44-57 ante. As to the acquisition of British overseas territories citizenship by registration see paras 48-51 ante.

3 As to British overseas citizens see paras 8, 58-62 ante. As to the acquisition of British overseas citizenship by registration see para 60 ante.

4 As to British subjects see paras 9, 66-71 ante. As to the acquisition of the status of British subject by registration see para 70 ante.

5 As to naturalisation as a British citizen see paras 37-39 ante.

6 As to naturalisation as a British overseas territories citizen see paras 52-54 ante.

7 As to the authority to whom an application is to be made see the British Nationality (General) Regulations 1982, SI 1982/986, reg 4 (amended by virtue of the British Overseas Territories Act 2002 ss 1(2), 2(3)); and the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, reg 4 (amended by virtue of the British Overseas Territories Act 2002 s 1(2)). As to the power to make regulations see para 6 ante.

8 See the British Nationality (General) Regulations 1982, SI 1982/986, reg 3; and the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, reg 3 (amended by virtue of the British Overseas Territories Act 2002 s 2(3)). For the purposes of the British Nationality Act 1981, an application is to be taken to have been made at the time of its receipt by a person authorised to receive it on behalf of the person to whom

it is made; and references to the date of such an application are references to the date of its receipt by a person so authorised: s 50(8).

The requirements may include a requirement to observe a deadline; eg certain applications made by virtue of a connection with Hong Kong had to be made on or before 31 March 1996: see s 42(6) (added by the Hong Kong (British Nationality) (Amendment) Order 1993, SI 1993/1795, art 3; and amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b)). See further para 32 ante.

9 See the British Nationality (General) Regulations 1982, SI 1982/986, reg 3, Sch 1 Pt I; and the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, reg 3, Sch 1 Pt I (reg 3 as amended: see note 8 supra).

10 See the British Nationality (General) Regulations 1982, SI 1982/986, reg 3, Sch 2 (amended by virtue of the British Overseas Territories Act 2002 ss 1(2), 2(3)); and the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, reg 3, Sch 2 (reg 3 as amended (see note 8 supra); and Sch 2 amended by virtue of the British Overseas Territories Act 2002 ss 1(2), 2(3)).

11 See the British Nationality (General) Regulations 1982, SI 1982/986, reg 5; and the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, reg 5. See also the British Nationality (General) Regulations 1982, SI 1982/986, Sch 1 Pt II; and the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, Sch 1 Pt II.

12 British Nationality Act 1981 s 42(1)(i). As to the fees payable see the British Nationality (Fees) Regulations 1996, SI 1996/444 (amended by SI 1997/1328).

13 British Nationality Act 1981 s 42(1)(ii). For the form of the oath of allegiance see s 42(1), Sch 5 (amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b)). The oath must be taken within three months of the giving of a notice that the registration is to be effected or that the certificate of naturalisation is to be granted, or within such longer time as the Secretary of State may allow: see the British Nationality (General) Regulations 1982, SI 1982/986, reg 6(2); and the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, reg 6(2). As to the administration of the oath see the British Nationality (General) Regulations 1982, SI 1982/986, reg 6(1), Sch 3 (amended by virtue of the British Overseas Territories Act 2002 s 1(2)); and the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, reg 6(1), Sch 3 (amended by virtue of the British Overseas Territories Act 2002 s 1(2)). The requirement for the taking of an oath does not apply to a person who is not of full age or who is already a British citizen, a British overseas territories citizen, a British national (overseas), a British overseas citizen, a British subject, or a citizen of any country of which Her Majesty is Queen: British Nationality Act 1981 s 42(2) (amended by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(5); and by virtue of the British Overseas Territories Act 2002 s 2(2)(b)). An oath of allegiance was never required for registration as a British national (overseas), since only British overseas territories citizens were eligible for such registration. As to British national (overseas) status see paras 8, 63-65 ante.

14 British Nationality Act 1981 s 42(3). The provisions referred to in the text are those of s 42(1), (2) (as amended): see the text and notes 12-13 supra.

15 See *ibid* s 42(4) (amended by the Hong Kong (British Nationality) Order 1986, SI 1986/948, art 7(5); and by virtue of the British Overseas Territories Act 2002 s 2(2)(b)).

16 See the British Nationality Act 1981 s 42(5) (amended by virtue of the British Overseas Territories Act 2002 s 2(2)(b)). For the form of a certificate of naturalisation see the British Nationality (General) Regulations 1982, SI 1982/986, reg 7, Sch 4; and the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, reg 7, Sch 4 (amended by virtue of the British Overseas Territories Act 2002 s 2(3)).

UPDATE

77-82 Miscellaneous Matters

SI 1982/986 replaced by British Nationality (General) Regulations 2003, SI 2003/548 (amended by SI 2003/3158, SI 2005/2114, SI 2005/2785, SI 2007/3137, SI 2010/785).

79 Applications for naturalisation and registration; oaths of allegiance

TEXT AND NOTES--Provision has been made regarding sufficient knowledge of the English language for the purpose of an application for naturalisation as a British citizen under

the 1981 Act s 6: see the British Nationality (General) Regulations 2003, SI 2003/548, reg 5A (added by SI 2004/1726; substituted by SI 2004/2109; and amended by SI 2010/785).

SI 1982/987 replaced: British Nationality (British Overseas Territories) Regulations 2007, SI 2007/3139.

TEXT AND NOTES 12-16--Replaced. See now the 1981 Act s 42 (substituted by the Nationality, Immigration and Asylum Act 2002 s 3, Sch 1 para 1), 1981 Act ss 42A, 42B (added by the 2002 Act Sch 1 para 1), 1981 Act Sch 5 (substituted by the 2002 Act Sch 1 para 2). For the form of words in Welsh which may be used as an alternative to the form of citizenship oath and pledge set out in the 1981 Act Sch 5, see the Citizenship Oath and Pledge (Welsh Language) Order 2007, SI 2007/1484, art 3.

NOTE 12--SI 1996/444 replaced: British Nationality (Fees) Regulations 2003, SI 2003/3157 (amended by SI 2005/651, SI 2005/2114).

NOTE 13--SI 1982/986 reg 6 now SI 2003/548 regs 6 (citizenship oaths and pledges), 6A (arrangements for, and conduct of, citizenship ceremonies) (substituted by SI 2003/3158). SI 1982/986 Sch 3 now SI 2003/548 Sch 3 (amended by SI 2003/3158).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(9) MISCELLANEOUS MATTERS/80. Evidence.

80. Evidence.

Every document purporting to be a notice, certificate, order or declaration, or an entry in a register, or a subscription of an oath of allegiance, given, granted or made under the British Nationality Act 1981 or any of the former nationality Acts¹ is to be received in evidence and, unless the contrary is proved, is to be deemed to have been given, granted or made by or on behalf of the person by whom or on whose behalf it purports to have been given, granted or made². Prima facie evidence of any such document may be given by the production of a document purporting to be certified as a true copy of it by such person and in such manner as may be prescribed³. Any entry in a register made under the British Nationality Act 1981 or any of the former nationality Acts is to be received as evidence (and in Scotland as sufficient evidence) of the matters stated in the entry⁴. A certificate given by or on behalf of the Secretary of State that a person was at any time in Crown service under the government of the United Kingdom⁵ or that a person's recruitment for such service took place in the United Kingdom is, for the purposes of the British Nationality Act 1981, conclusive evidence of that fact⁶.

1 For the meaning of 'the former nationality Acts' see para 6 note 26 ante.

2 British Nationality Act 1981 s 45(1). Section 45 applies for the purposes of the British Nationality (Falkland Islands) Act 1983 as it applies for the purposes of the British Nationality Act 1981: British Nationality (Falkland Islands) Act 1983 s 4(1), (2)(d). The British Nationality Act 1981 s 45 has effect as if any reference in it to the British Nationality Act 1981 included a reference to the Hong Kong (British Nationality) Order 1986, SI 1986/948: see art 7(7)(a).

3 British Nationality Act 1981 s 45(2). A document may be certified to be a true copy of a document by means of a statement in writing to that effect signed by a person authorised by the Secretary of State, the Lieutenant-Governor, the High Commissioner or the Governor in that behalf: see the British Nationality (General) Regulations 1982, SI 1982/986, reg 14; and the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, reg 14. See also the British Nationality (Hong Kong) Regulations 1986, SI 1986/2175, reg 11. As to the power to make regulations see para 6 ante. As to the Secretary of State see para 2 ante.

4 British Nationality Act 1981 s 45(3).

5 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

6 British Nationality Act 1981 s 45(4).

UPDATE

77-82 Miscellaneous Matters

SI 1982/986 replaced by British Nationality (General) Regulations 2003, SI 2003/548 (amended by SI 2003/3158, SI 2005/2114, SI 2005/2785, SI 2007/3137, SI 2010/785).

80 Evidence

NOTE 3--SI 1982/987 reg 14 now British Nationality (British Overseas Territories) Regulations 2007, SI 2007/3139, reg 10.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(9) MISCELLANEOUS MATTERS/81. Offences.

81. Offences.

Any person who for the purpose of procuring anything to be done or not to be done under the British Nationality Act 1981 makes any statement which he knows to be false¹ in a material particular, or recklessly makes any statement which is false in a material particular, commits an offence².

Any person who, without reasonable excuse, fails to comply with any requirement imposed on him by regulations with respect to the delivering up of certificates of naturalisation³, commits an offence⁴.

1 As to the effect of fraud, false representation or concealment of material fact on registration or naturalisation see paras 42, 57, 65 ante.

2 See the British Nationality Act 1981 s 46(1). The penalty on summary conviction is imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both: see s 46(1) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Powers of Criminal Courts (Sentencing) Act 2000 s 128; and MAGISTRATES vol 29(2) (Reissue) para 807. If he is not a British citizen, the offender is also liable to deportation: see the Immigration Act 1971 s 3(6) (as amended); and para 160 et seq post.

As to the time within which proceedings in the case of an offence under the British Nationality Act 1981 s 46(1) must be brought see s 46(3), (4). For the purposes of trial, the offence is deemed to have been committed either at the place at which it actually was committed or at any place at which the person accused may be: s 46(5).

Section 46 applies for the purposes of the British Nationality (Falkland Islands) Act 1983 as it applies for the purposes of the British Nationality Act 1981: British Nationality (Falkland Islands) Act 1983 s 4(1), (2)(e). The British Nationality Act 1981 s 46(1) has effect as if any reference in it to the British Nationality Act 1981 included a reference to the Hong Kong (British Nationality) Order 1986, SI 1986/948: see art 7(7)(b). As to the

application of the British Nationality Act 1981 s 46(1) and s 46(2) (see the text and note 4 *infra*) to Jersey see s 46(6).

3 As to regulations relating to the delivering up of certificates of naturalisation see the British Nationality (General) Regulations 1982, SI 1982/986, reg 13; the British Nationality (Dependent Territories) Regulations 1982, SI 1982/987, reg 13 (as amended); and paras 42-43, 57 *ante*. Citizenship by registration is effected by the entry in the register, cancellation of which is within the authorities' control (though documentary evidence of it in the hands of the registered person would no longer be valid); but citizenship by naturalisation is effected by the grant to the citizen of a certificate of naturalisation, and it is accordingly the certificate itself which requires cancellation.

4 See the British Nationality Act 1981 s 46(2). See also note 2 *supra*. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale: s 46(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). If he is not a British citizen, the offender is also liable to deportation: see the Immigration Act 1971 s 3(6) (as amended); and para 160 *et seq post*.

For the purposes of trial, the offence is deemed to have been committed either at the place at which it actually was committed or at any place at which the person accused may be: s 46(5).

UPDATE

77-82 Miscellaneous Matters

SI 1982/986 replaced by British Nationality (General) Regulations 2003, SI 2003/548 (amended by SI 2003/3158, SI 2005/2114, SI 2005/2785, SI 2007/3137, SI 2010/785).

81 Offences

NOTE 3--SI 1982/987 replaced: British Nationality (British Overseas Territories) Regulations 2007, SI 2007/3139.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/2. BRITISH NATIONALITY/(9) MISCELLANEOUS MATTERS/82. Limitation of criminal liability.

82. Limitation of criminal liability.

A British subject¹ or citizen of the Republic of Ireland² is not guilty of an offence against the laws of any part of the United Kingdom and colonies³ by reason of anything done or omitted in any Commonwealth country⁴ or in the Republic of Ireland or in any foreign country⁵, unless: (1) the act or omission would be an offence if he were an alien⁶; and (2) in the case of an act or omission in any Commonwealth country or in the Republic of Ireland, it would be an offence if the country in which the act is done or the omission made were a foreign country⁷.

1 As to British subjects see paras 9, 66-71 *ante*.

2 See para 12 *ante*.

3 As to the meaning of 'United Kingdom' see para 5 note 1 *ante*. For the purposes of the British Nationality Act 1948, references to the colonies include references to the Channel Islands and the Isle of Man: s 33(1).

4 See para 11 notes 4, 16 *ante*.

5 For the meaning of 'foreign country' see para 6 note 15 *ante*.

6 As to aliens see para 13 *ante*.

7 See the British Nationality Act 1948 s 3(1); and the Ireland Act 1949 ss 1(1), (3), 3 (s 3 amended by the British Nationality Act 1981 s 52(6), Sch 7). See also the Foreign Jurisdiction Acts 1890 and 1913. The British Nationality Act 1948 s 3(1) does not apply to the contravention of any provision of the Merchant Shipping Act 1995 (see SHIPPING AND MARITIME LAW): see the British Nationality Act 1948 s 3(1) proviso (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13). The Antarctic Treaty Act 1967 (see ANIMALS vol 2 (2008) PARA 990) provides that the British Nationality Act 1948 s 3(1) does not have effect in relation to any offence under that Act: see the Antarctic Treaty Act 1967 s 10(8). As from a day to be appointed s 10(8) is repealed by the Antarctic Act 1994 s 33, Schedule. At the date at which this volume states the law no such day had been appointed. The limitation of liability by the British Nationality Act 1948 s 3(1) is expressly preserved in relation to the extra-territorial effect given to the Air Navigation Order 2000, SI 2000/1562 (as amended) (see AIR LAW): see art 123.

The limitation in British Nationality Act 1948 s 3(1) also extended to the laws of any protectorate or United Kingdom trust territory (see para 17 note 6 ante), but no protectorates or United Kingdom trust territories now remain.

UPDATE

77-82 Miscellaneous Matters

SI 1982/986 replaced by British Nationality (General) Regulations 2003, SI 2003/548 (amended by SI 2003/3158, SI 2005/2114, SI 2005/2785, SI 2007/3137, SI 2010/785).

82 Limitation of criminal liability

NOTE 7--SI 2000/1562 art 123 now Air Navigation Order 2005, SI 2005/1970, art 149.

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/3. Immigration/(1) Control of Admission to the United Kingdom/(i) Scope of Control/83. The legislative framework.

3. IMMIGRATION

(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM

(i) Scope of Control

83. The legislative framework.

The principal enactment regulating entry into and stay in the United Kingdom¹ is the Immigration Act 1971². This Act and the Immigration Rules³ together state the general principles on which the system of immigration control is based and set out a cohesive scheme for the assessment and consideration of applications for leave to enter and remain in the United Kingdom. These provisions are supplemented by the Immigration and Asylum Act 1999⁴, the Special Immigration Appeals Commission Act 1997⁵, and various other enactments⁶. The legislation is applicable throughout the United Kingdom⁷, and extends to the Channel Islands and the Isle of Man⁸. Special provision is also made in connection with persons who arrive in the United Kingdom through the Channel Tunnel⁹, the rights of EEA nationals to enter and remain in the United Kingdom¹⁰, and the rights of persons claiming asylum¹¹.

'Immigration laws' means the Immigration Act 1971 and any law for purposes similar to that Act which is for the time being or has (before or after the passing of that Act) been in force in any part of the United Kingdom and Islands¹². Generally, 'the Immigration Acts' means the

Immigration Act 1971, the Immigration Act 1988, the Asylum and Immigration Appeals Act 1993, the Asylum and Immigration Act 1996, and the Immigration and Asylum Act 1999¹³.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 The Immigration Act 1971 is a comprehensive code intended to govern any right of entry into the United Kingdom (*R v Secretary of State for the Home Department, ex p Thakrar* [1974] QB 684, [1974] 2 All ER 261, CA) save so far as the person in question is a national of an European Community or EEA member state (see the text and note 10 infra; and para 225 et seq post) or is claiming asylum (see the text and note 11 infra; and para 238 et seq post). The Immigration Act 1971 was brought into force on 1 January 1973: see the Immigration Act 1971 (Commencement) Order 1972, SI 1972/1514.

3 The Immigration Rules are made by the Secretary of State and statements of the rules or any changes thereof are required to be laid before Parliament: see the Immigration Act 1971 s 3(2). If a statement laid before either House of Parliament is disapproved by a resolution of that House passed within the period of 40 days beginning with the date of laying (excluding any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days), then the Secretary of State must make any changes which appear to him to be required in the circumstances and lay a statement of the changes before Parliament not later than 40 days from the date of the resolution (excluding periods of dissolution, etc as mentioned above): s 3(2). As to the negative resolution procedure see STATUTES vol 44(1) (Reissue) paras 1516-1517.

The current rules are contained in the Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules'), as amended by the Statements of Changes in Immigration Rules passed in September 1994 (Cm 2663), October 1995 (HC Paper (1995-96) no 797), January 1996 (Cm 3073), March 1996 (HC Paper (1995-96) no 274), April 1996 (HC Paper (1995-96) no 329), August 1996 (Cm 3365), October 1996 (HC Paper (1996-97) no 31), February 1997 (HC Paper (1996-97) no 338), May 1997 (Cm 3669), June 1997 (HC Paper (1997-98) no 26), July 1997 (HC Paper (1997-98) no 161), May 1998 (Cm 3953), October 1998 (Cm 4065), November 1999 (HC Paper (1999-2000) no 22), July 2000 (HC Paper (1999-2000) no 704), October 2000 (Cm 4851), September 2001 (Cm 5253), April 2002 (HC Paper (2001-02) no 735) and August 2002 (Cm 5597). Any applications made before 1 October 1994 for entry clearance, leave to enter or remain or variation of leave to enter or remain, other than applications by persons seeking asylum, were decided under the previous Statement of Changes in Immigration Rules (HC Paper (1989-90) no 251) (as amended): Immigration Rules para 4 (amended by Statement of Changes in Immigration Rules (Cm 3365) (1996) para 1).

The Immigration Rules are not, unlike most pieces of delegated legislation under Acts of Parliament, statutory instruments. They have been categorised as having the same effect in law as other delegated legislation (see *R v Chief Immigration Officer, Heathrow Airport, ex p Bibi* [1976] 3 All ER 843 at 848, [1976] 1 WLR 979 at 985, CA, per Lord Roskill), but do not in fact comprise a precise code having statutory force, being rules of practice laid down for the guidance of those entrusted with the administration of the Immigration Act 1971, and accordingly do not amount to strict rules of law: see *Singh v Immigration Appeal Tribunal* [1986] 2 All ER 721 at 727, sub nom *R v Immigration Appeal Tribunal, ex p Singh* [1986] 1 WLR 910 at 917-918, 130 Sol Jo 525 at 526, [1986] Imm AR 352 at 359, HL, per Lord Bridge of Harwich (citing *R v Secretary of State for the Home Department, ex p Hosenball* [1977] 3 All ER 452 at 458-459, [1977] 1 WLR 766 at 780-781, CA, per Lord Denning MR, at 462-463 and 785 per Geoffrey Lane LJ, and at 465 and 788 per Cumming-Bruce LJ). The Secretary of State may, and sometimes does, depart from the Immigration Rules or authorise an immigration officer to do so: see para 86 note 22 post. Although the Immigration Rules are rules of practice rather than of law, laid down for the guidance of immigration officers and tribunals, it seems that they do have the force of law for adjudicators hearing immigration appeals: *R v Secretary of State for the Home Department, ex p Hosenball* supra; *Pearson v Immigration Appeal Tribunal* [1978] Imm AR 212, CA. The Immigration Rules should not be construed as strictly as a statute or a statutory instrument, but this does not permit departing from the ordinary meaning of their language: *Alexander v Immigration Appeal Tribunal* [1982] 2 All ER 766, [1982] 1 WLR 1076, [1982] Imm AR 50, HL; *R v Immigration Appeal Tribunal, ex p Rahman* [1987] Imm AR 313, CA; *ECO Bombay v de Noronha* [1995] Imm AR 341, CA; *R v Secretary of State for the Home Department, ex p Arman Ali* [2000] Imm AR 134. However, like delegated legislation, the provisions of the Immigration Rules may be struck down as unreasonable and ultra vires (see *R v Immigration Appeal Tribunal, ex p Manshoora Begum* [1986] Imm AR 385 (where the requirement that a distressed relative had to have a standard of living substantially below that of his own country was held to be unreasonable)) or disapplied when their application in a particular case would result in a breach of the United Kingdom's obligations under the Human Rights Convention (see the Human Rights Act 1998 s 6; and CONSTITUTIONAL LAW AND HUMAN RIGHTS).

The Immigration Rules may not lay down any practice which would be contrary to the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906) (see the Asylum and Immigration Appeals Act 1993 s 2) and must be read and given effect in a way which is compatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) (see the Human Rights Act 1998 s 3; and CONSTITUTIONAL LAW AND HUMAN RIGHTS).

4 The Immigration and Asylum Act 1999 makes provision, inter alia, for the giving of immigration advice (see paras 169-172 post), appeals (see paras 173-195 post), carriers' liability (see paras 203-204 post), and the arrest and detention of illegal entrants and persons suspected of connected offences (see para 206 et seq post). The Act also makes provision in connection with asylum and asylum-seekers (see para 238 et seq post).

5 The Special Immigration Appeals Commission Act 1997 establishes the Special Immigration Appeals Commission, which has jurisdiction to hear appeals against immigration decisions taken on grounds of national security or because a person's exclusion is deemed to be conducive to the public good (see paras 184, 189, 194 post).

6 Eg the surviving provisions of the Immigration Act 1988 (see paras 85, 93 post) and the Asylum and Immigration Act 1996 (see para 200 post). See also the Immigration (Carriers' Liability) Act 1987 (see paras 95, 204 post) and the Asylum and Immigration Appeals Act 1993 s 9A (as added) (ie the remaining substantive provision of this Act: see para 214 post). As from a day to be appointed, the Immigration (Carriers' Liability) Act 1987 is repealed by the Immigration and Asylum Act 1999 s 169(3), Sch 16. At the date at which this volume states the law no such day had been appointed.

7 See the Immigration Act 1971 s 37(2); the Immigration (Carriers' Liability) Act 1987 s 2(3) (prospectively repealed: see note 6 supra); the Immigration Act 1988 s 12(5); the Asylum and Immigration Appeals Act 1993 s 15(2); the Asylum and Immigration Act 1996 s 13(6); the Special Immigration Appeals Commission Act 1997 s 9(4); and the Immigration and Asylum Act 1999 s 170(6).

8 See the Immigration Act 1971 s 36; the Immigration (Carriers' Liability) Act 1987 s 2(3) (prospectively repealed: see note 6 supra), the Immigration Act 1988 s 12(5); the Asylum and Immigration Appeals Act 1993 s 15(1); the Asylum and Immigration Act 1996 s 13(5); the Special Immigration Appeals Commission Act 1997 s 9(3); and the Immigration and Asylum Act 1999 s 170(7). The legislation (with the exception of the Immigration and Asylum Act 1999) has been extended, with appropriate modifications, to the Isle of Man and to the Channel Islands: see the Immigration (Isle of Man) Order 1991, SI 1991/2630 (amended by SI 1997/275); the Immigration (Isle of Man) Order 1997, SI 1997/275; the Immigration (Guernsey) Order 1993, SI 1993/1796; the Immigration (Jersey) Order 1993, SI 1993/1797; the Asylum and Immigration Act 1996 (Jersey) Order 1998, SI 1998/1070; and the Asylum and Immigration Act 1996 (Guernsey) Order 1998, SI 1998/1264 (the latter two orders being now of limited application following the repeal of most of the Asylum and Immigration Act 1996).

9 See the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813 (amended by SI 1994/1405; SI 1996/2283; SI 2000/913; SI 2000/1775; SI 2001/178; SI 2001/418; SI 2001/1544; SI 2001/3707); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, both of which modify the principal legislation in relation to persons arriving through the Channel Tunnel.

10 See the Immigration (European Economic Area) Regulations 2000, SI 2000/2326; and para 225 et seq post. For the meaning of 'EEA national' see para 227 post.

11 The rights of persons claiming the protection of the Refugee Convention and Protocol are principally dealt with in the Immigration and Asylum Act 1999: see para 238 et seq post.

12 Immigration Act 1971 s 33(1). 'The Islands' means the Channel Islands and the Isle of Man; and 'the United Kingdom and Islands' means the United Kingdom and the Islands taken together: s 33(1).

13 Ibid s 32(5) (added by the Immigration and Asylum Act 1999 Sch 14 paras 43, 54(1), (5)); Immigration and Asylum Act 1999 s 167(1); Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 1(3).

UPDATE

83 The legislative framework

NOTES--As to the power of the Secretary of State to make an order enabling the United Kingdom to operate immigration and other frontier controls at an EEA port for the purposes of giving effect to an international agreement, see the Nationality, Immigration and Asylum Act 2002 s 141; and PARA 83A.

TEXT AND NOTE 3--Rules under the Immigration Act 1971 s 3 (1) may require a specified procedure to be followed in making or pursuing an application or claim (whether or not under those rules or any other enactment), (2) may, in particular, require the use of a specified form and the submission of specified information or documents, (3) may make provision about the manner in which a fee is to be paid, and (4) may make provision for the consequences of failure to comply with a requirement under head (1),

(2) or (3): Immigration, Asylum and Nationality Act 2006 s 50(1). In respect of any application or claim in connection with immigration (whether or not under the rules referred to in s 50(1) or any other enactment) the Secretary of State (a) may require the use of a specified form, (b) may require the submission of specified information or documents, and (c) may direct the manner in which a fee is to be paid; and the rules referred to in s 50(1) may provide for the consequences of failure to comply with a requirement under head (a), (b) or (c): s 50(2).

NOTE 3--Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) further amended by the Statements of Changes in Immigration Rules passed in November 2002 (HC Paper (2001-02) no 1301 and HC Paper (2002-03) no 104), January 2003 (HC Paper (2002-03) no 180), February 2003 (HC Paper (2002-03) no 389), March 2003 (HC Paper (2002-03) no 538), May 2003 (Cm 5829), August 2003 (Cm 5949), November 2003 (HC Paper (2002-03) no 1224), December 2003 (HC Paper (2003-04) no 95), January 2004 (HC Paper (2003-04) no 176), February 2004 (HC Paper (2003-04) no 370), March 2004 (HC Paper (2003-04) no 464), April 2004 (HC Paper (2003-04) no 523), August 2004 (Cm 6297), September 2004 (Cm 6339), October 2004 (HC Paper (2003-04) no 1112), December 2004 (HC Paper (2004-05) no 164), January 2005 (HC Paper (2004-05) no 194), February 2005 (HC Paper (2004-05) nos 302, 346), March 2005 (HC Paper (2004-05) no 486), June 2005 (HC Paper (2005-06) no 104), July 2005 (HC Paper (2005-06) no 299), October 2005 (HC Paper (2005-06) no 582), November 2005 (HC Paper (2005-06) nos 645, 697), December 2005 (HC Paper (2005-06) no 769), January 2006 (HC Paper (2005-06) no 819), March 2006 (HC Paper (2005-06) nos 949, 1016), April 2006 (HC Paper (2005-06) no 1053), July 2006 (HC Paper (2005-06) no 1337), September 2006 (Cm 6918), November 2006 (HC Paper (2005-06) no 1702), December 2006 (HC Paper (2006-07) no 130), March 2007 (HC Paper (2006-07) no 398), April 2007 (Cms 7074, 7075), November 2007 (HC Papers (2007-08) nos 28, 40, 82), February 2008 (HC Paper (2007-08) no 321), March 2008 (HC Paper (2007-08) no 420), June 2008 (HC Paper (2007-08) no 607), July 2008 (HC Paper (2007-08) nos 951, 971), November 2008 (HC Paper (2007-08) no 1113), February 2009 (HC Paper (2008-09) no 227), March 2009 (HC Paper (2008-09) no 314), April 2009 (HC Paper (2008-09) no 413), September 2009 (Cms 7701, 7711), December 2009 (HC Paper (2009-10) no 120), February 2010 (HC Paper (2009-10) no 367) and March 2010 (HC Paper (2009-10) no 439).

See *R (on the application of BAPIO Action Ltd) v Secretary of State for the Home Department* [2008] UKHL 27, [2009] 1 All ER 93 (Department of Health guidance which directly and intentionally affected immigration law and practice by imposing a restriction beyond those contained in Immigration Rules declared unlawful).

The Immigration Rules are not delegated or subordinate legislation, or 'rules' to which the Interpretation Act 1978 applies, although there is no doubt that they are 'law' in the sense that decisions have to be taken in accordance with them: *Odelola v Secretary of State for the Home Department* [2009] UKHL 25, [2009] 3 All ER 1061 (save for possibility of parliamentary disapproval, no inhibition on Secretary of State changing Immigration Rules).

NOTE 6--1993 Act s 9A repealed: Asylum and Immigration (Treatment of Claimants, etc) Act 2004 Sch 2 para 9, Sch 4.

NOTE 8--The 1999 Act Pts 1-3 (ss 1-54), Pt 7 (ss 128-146) have been extended, with modifications, to Guernsey: Immigration and Asylum Act 1999 (Guernsey) Order 2003, SI 2003/2900 (amended by SI 2005/617). SI 1991/2630 further amended: SI 2005/617. SI 1993/1797 amended: SI 2003/1252. SI 1991/2630 replaced: Immigration (Isle of Man) Order 2008, SI 2008/680.

NOTE 9--SI 1993/1813 further amended: SI 2003/2799, SI 2005/3389, SI 2007/3579.

NOTE 10--SI 2000/2326 replaced: Immigration (European Economic Area) Regulations 2006, SI 2006/1003 (amended by SI 2009/1117).

TEXT AND NOTE 13--A reference in any enactment to 'the Immigration Acts' is now to the 1971 Act, the 1988 Act, the 1993 Act, the 1996 Act, the 1999 Act, the 2002 Act, and the 2004 Act: 1971 Act s 32(5); 1999 Act s 167(1) (both amended by 2004 Act s 44).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(i) Scope of Control/83A. EEA ports: juxtaposed controls.

83A. EEA ports: juxtaposed controls.

The Secretary of State may by order make provision for the purpose of giving effect to an international agreement¹ which concerns immigration control at an EEA port², whether or not it also concerns other aspects of frontier control³ at the port⁴. The order may make any provision which appears to the Secretary of State likely to facilitate implementation of the international agreement, including those aspects of the agreement which relate to frontier control other than immigration control, or which appears appropriate as a consequence of provision made for the purpose of facilitating implementation of the agreement⁵.

In particular, the order may (1) provide for a law of England and Wales to have effect, with or without modification, in relation to a person in a specified area or anything done in a specified area⁶; (2) provide for a law of England and Wales not to have effect in relation to a person in a specified area or anything done in a specified area; (3) provide for a law of England and Wales to be modified in its effect in relation to a person in a specified area or anything done in a specified area; (4) disapply or modify an enactment in relation to a person who has undergone a process in a specified area; (5) disapply or modify an enactment otherwise than under heads (2), (3) or (4); (6) make provision conferring a function, which may include provision conferring a discretionary function, or provision conferring a function on a servant or agent of the government of a state other than the United Kingdom; (7) create or extend the application of an offence; (8) impose or permit the imposition of a penalty; (9) require the payment of, or enable a person to require the payment of, a charge or fee; (10) make provision about enforcement, which may include provision conferring a power of arrest, detention or removal from or to any place, or provision for the purpose of enforcing the law of a state other than the United Kingdom; (11) confer jurisdiction on a court or tribunal; (12) confer immunity or provide for indemnity; (13) make provision about compensation; (14) impose a requirement, or enable a requirement to be imposed, for a person to co-operate with or to provide facilities for the use of another person who is performing a function under the order or under the international agreement, which may include a requirement to provide facilities without charge; and (15) make provision about the disclosure of information⁷.

Such an order may (a) make provision which applies generally or only in specified circumstances; (b) make different provision for different circumstances; and (c) amend an enactment⁸. The order must be made by statutory instrument, may not be made unless the Secretary of State has consulted with such persons as appear to him to be appropriate, and may not be made unless a draft has been laid before and approved by resolution of each House of Parliament⁹.

1 'International agreement' means an agreement made between Her Majesty's Government and the government of another state: Nationality, Immigration and Asylum Act 2002 s 141(6).

2 'Immigration control' means arrangements made in connection with the movement of persons into or out of the United Kingdom or another state; 'EEA port' means a port in an EEA state from which passengers are

commonly carried by sea to or from the United Kingdom; 'EEA state' means a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as it has effect from time to time): s 141(6).

3 'Frontier control' means the enforcement of law which relates to, or in so far as it relates to, the movement of persons or goods into or out of the United Kingdom or another state: s 141(6).

4 Ibid s 141(1). See the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003, SI 2003/2818 (amended by SI 2005/3389, SI 2006/1003, SI 2006/2908), which gives effect to a treaty with the French Republic.

5 2002 Act s 141(2).

6 'Specified area' means an area, whether of the United Kingdom or of another state, specified in an international agreement: ibid s 141(6).

7 Ibid s 141(3).

8 Ibid s 141(4).

9 Ibid s 141(5).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(i) Scope of Control/84. The scope of immigration control.

84. The scope of immigration control.

Those who are not British citizens¹ are generally subject to immigration control, and thus require leave to enter or remain in the United Kingdom². Immigration control generally applies to British overseas territories citizens, British overseas citizens, British subjects, British protected persons, British nationals (overseas), Commonwealth citizens and aliens³.

Persons who are in the Immigration Act 1971 expressed to have the right of abode in the United Kingdom, namely British citizens and a limited group of Commonwealth citizens, are not subject to immigration control⁴. Persons with the right of abode in the United Kingdom are free to live in, and to come and go into and from, the United Kingdom without let or hindrance except such as may be required under the Immigration Act 1971 to enable their right to be established or such as may be otherwise lawfully imposed on any person⁵.

1 As to British citizens see paras 8, 23-43 ante. When any question arises under the Immigration Act 1971 whether or not a person is a British citizen the burden lies on the person asserting it to prove it: s 3(8) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2). In relation to illegal entry see *Re Bamgbose* [1990] Imm AR 135, CA (birth certificate not sufficient to discharge burden of proof if holder cannot prove that he is the person named therein); *Fawehinmi v Secretary of State for the Home Department* [1991] Imm AR 1, CA (on an application for judicial review of a decision to treat the applicant as an illegal entrant the court must consider, at the permission stage, whether the applicant has any prospect of discharging the burden of proving his British citizenship); *Mokuolu v Secretary of State for the Home Department* [1989] Imm AR 51, CA (persons erroneously allowed admission as British passport-holders can later be treated as illegal entrants).

As to the legislative framework of immigration control of immigration control see para 83 ante.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see paras 8, 44-57 ante. As to British overseas citizens see paras 8, 58-62 ante. As to British subjects see paras 9, 66-71 ante. As to British protected persons see paras 10, 72-76 ante. As to British national (overseas) status see paras 8, 63-65 ante. As to Commonwealth citizens see para 11 ante. As to aliens see para 13 ante.

The Immigration Act 1971 does not supersede or impair any power exercisable by Her Majesty in relation to aliens by virtue of the royal prerogative: s 33(5). As to the royal prerogative see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 367 et seq; CROWN AND ROYAL FAMILY vol 12(1) (Reissue) para 46 et seq.

4 With a few exceptions, the effect of the British Nationality Act 1981 is to make British citizenship, and British citizenship alone, synonymous with the right of abode; British overseas territories citizens, British overseas citizens, British subjects, British protected persons and British nationals (overseas) do not have the right of abode in the United Kingdom: see paras 14 ante, 85 post. However, a Commonwealth citizen who: (1) immediately before 1 January 1983 was a Commonwealth citizen having the right of abode in the United Kingdom by virtue of the Immigration Act 1971 s 2(1)(d) or s 2(2) as then in force; and (2) has not ceased to be a Commonwealth citizen in the meanwhile, retains the right of abode for his lifetime: see s 2(1), (2) (substituted by the British Nationality Act 1981 s 39(2)); and see further para 85 post.

Citizens of the Republic of Ireland (see paras 12 ante, 94 post), EEA nationals and members of their families (see paras 13 ante, 225-237 post), and nationals of countries which have entered Association Agreements with the European Community, have special privileges in relation to immigration control.

5 Immigration Act 1971 s 1(1). The right to live in the United Kingdom without let or hindrance does not confer the right to bring in a wife who herself requires leave to enter: *R v Secretary of State for the Home Department, ex p Rofathullah* [1989] QB 219; affd sub nom *R v Secretary of State for the Home Department, ex p Ullah* [1988] 3 All ER 1, sub nom *Rofath Ullah v Secretary of State for the Home Department* [1988] Imm AR 514, CA (requirement to secure entry clearance for wife was held to be legitimate, not a let or hindrance).

UPDATE

84 The scope of immigration control

TEXT AND NOTES--As to the power of the Secretary of State to participate in international projects designed better to control migration see PARA 84A.

As to temporary protection in the event of a mass influx of displaced persons see the Immigration Rules Pt 11A (paras 354-356B) (added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 164) para 8). See also Displaced Persons (Temporary Protection) Regulations 2005, SI 2005/1379; and PARA 84B.

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/3. Immigration/(1) Control of Admission to the United Kingdom/(i) Scope of Control/84A. International projects.

84A. International projects.

The Secretary of State may participate in a project which is designed to (1) reduce migration; (2) assist or ensure the return of migrants¹; (3) facilitate co-operation between states in matters relating to migration; (4) conduct or consider research about migration; or (5) arrange or assist the settlement of migrants, whether in the United Kingdom or elsewhere².

In particular, the Secretary of State may (a) provide financial support to an international organisation which arranges or participates in a project of that kind; (b) provide financial support to an organisation in the United Kingdom or another country which arranges or participates in a project of that kind; (c) provide or arrange for the provision of financial or other assistance to a migrant who participates in a project of that kind; and (d) participate in financial or other arrangements which are agreed between Her Majesty's Government and the government of one or more other countries and which are or form part of a project of that kind³.

1 'Migrant' means a person who leaves the country where he lives hoping to settle in another country, whether or not he is a refugee within the meaning of any international Convention, and 'migration' is to be construed accordingly: Nationality, Immigration and Asylum Act 2002 s 59(3).

2 Ibid s 59(1). This provision does not confer a power to remove a person from the United Kingdom, or affect a person's right to enter or remain in the United Kingdom: s 59(4).

3 Ibid s 59(2).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(i) Scope of Control/84B. Temporary protection of displaced persons.

84B. Temporary protection of displaced persons.

Any person granted temporary protection¹ as a result of a decision of the Council of the European Union¹ is deemed for the purposes of the provision of means of subsistence³ to have been granted leave to enter or remain in the United Kingdom exceptionally⁴.

The Secretary of State may provide, or arrange for the provision of, accommodation for any person granted temporary protection⁵. When exercising such a power, the Secretary of State must have regard to the desirability, in general, of providing, or arranging for the provision of, accommodation in areas in which there is a ready supply of accommodation, and must not have regard to any preference that those who have been granted temporary protection or their dependants may have as to the locality in which the accommodation is to be provided⁶. If the Secretary of State asks a local authority⁷ or a registered social landlord⁸ to assist him in the exercise of such a power, the body to whom the request is made must co-operate in giving him such assistance in the exercise of that power as is reasonable in the circumstances⁹. The Secretary of State must pay to the body any costs reasonably incurred by that body in assisting him to provide, or arrange for the provision of, accommodation¹⁰.

A local authority must supply to the Secretary of State such information about its housing accommodation, whether or not occupied, as the Secretary of State may request¹¹. If the Secretary of State considers that a local authority has suitable¹² housing accommodation, he may direct¹³ the authority to make available such accommodation as may be specified in the direction for a period so specified to the Secretary of State for the purpose of providing accommodation¹⁴.

A person with temporary protection who is provided with accommodation is liable to make periodical payments of, or by way of, rent in respect of the accommodation provided and, in relation to any claim for housing benefit¹⁵, such payments are to be regarded as rent¹⁶.

A tenancy, licence or right of occupancy granted in order to provide accommodation ends on the date specified in a notice to vacate¹⁷ regardless of when the tenancy, licence or right of occupancy could otherwise be brought to an end¹⁸.

When a person granted temporary protection makes a claim for asylum¹⁹ which is recorded by the Secretary of State, the Secretary of State, when considering²⁰ whether he is satisfied that the person has made his claim for asylum as soon as reasonably practicable after his arrival in the United Kingdom, may disregard any time during which the person benefited from a grant of temporary protection²¹.

Where a consular officer²² is satisfied that a person outside the United Kingdom will benefit from a grant of temporary protection on arrival at a port of entry in the United Kingdom, that person is not required to pay any fee prescribed²³ in connection with an application for entry clearance²⁴.

1 'Temporary protection' means limited leave to enter or remain granted pursuant to the Immigration Rules (HC Paper (1993-94) no 395) Pt 11A: Displaced Persons (Temporary Protection) Regulations 2005, SI 2005/1379, reg 2(i).

2 Ie a decision made pursuant to EC Council Directive 2001/55 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member states in receiving such persons and bearing the consequences thereof ('the Temporary Protection Directive').

3 'Means of subsistence' means any means of subsistence governed by (1) the Social Security Contributions and Benefits Act 1992 Pt VII (ss 123-137) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 173 et seq); (2) the Jobseekers Act 1995 ss 1, 3 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 259-271); or (3) the State Pension Credit Act 2002 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 201A): SI 2005/1379 reg 4.

4 Ie outside the Immigration Rules: SI 2005/1379 reg 3(1). Regulations 3(1) and 5(1) cease to apply on the date when the period of mass influx of displaced persons to which the grant of temporary protection relates ends in accordance with the Temporary Protection Directive Ch II, but continue to apply for a period not exceeding 28 days from that date for as long as the person's grant of temporary protection has expired, the person is taking all reasonable steps to leave the United Kingdom or place himself in a position in which he is able to leave the United Kingdom, which may include co-operating with a voluntary return programme, and the person is in the United Kingdom: SI 2005/1379 regs 3(2)-(4), 5(2)-(4).

5 Ibid reg 5(1).

6 Ibid reg 7.

7 'Local authority' means a district council, a county borough council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly: ibid reg 2(e).

8 'Registered social landlord' has the same meaning as in the Housing Act 1996 Pt I (ss 1-64) (see HOUSING vol 22 (2006 Reissue) PARA 66 et seq): SI 2005/1379 reg 2(f).

9 Ibid reg 8(1), (2). Regulation 8 does not require a registered social landlord to act beyond his powers: reg 8(3).

10 Ibid reg 8(4).

11 Ibid reg 9.

12 Housing accommodation is suitable if it is unoccupied, likely to remain unoccupied for the foreseeable future if not made available, and appropriate for the accommodation of persons with temporary protection or capable of being made so with minor work: ibid reg 11. If the housing accommodation is not appropriate for the accommodation of persons with temporary protection but is capable of being made so with minor work, the Secretary of State may require the directed body to secure that the work is carried out without delay, and must meet the reasonable cost of carrying out the minor work: reg 12.

13 Before giving such a direction, the Secretary of State must consult such local authorities, local authority associations and other persons as he thinks appropriate in respect of a direction given to a local authority, and the National Assembly for Wales in respect of a direction given to a local authority in Wales: ibid reg 13. The Secretary of State must pay to a body to which a direction is given costs reasonably incurred by the body in complying with the direction: reg 10(2). Any direction given is enforceable by injunction on an application made on behalf of the Secretary of State: reg 10(3).

14 Ibid reg 10(1).

15 Ie by virtue of ibid reg 3.

16 Ie for the purposes of the Housing Benefit Regulations 2006, SI 2006/213, reg 14(1)(a) and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, SI 2006/214, reg 12(1)(a): SI 2005/1379 reg 14 (amended by SI 2006/217).

17 Such a notice to vacate must be in writing and specify as the notice period a period of at least seven days from the date of its service by post: SI 2005/1379 reg 15(2).

18 Ibid reg 15(1).

19 'Claim for asylum' has the same meaning as in the Nationality, Immigration and Asylum Act 2002 s 18: SI 2005/1379 reg 2(b).

20 le under the 2002 Act s 55(1)(b): see PARA 247A.

21 SI 2005/1379 reg 16.

22 'Consular officer' has the same meaning as in the Consular Fees (No 2) Order 1999, SI 1999/3132, art 2 (SI 1999/3132 now replaced by Consular Fees Order 2009, SI 2009/700): SI 2005/1379 reg 2(c).

23 le prescribed by SI 1999/3132: see NOTE 22.

24 SI 2005/1379 reg 17. 'Entry clearance' has the same meaning as in SI 1999/3132 art 2 (SI 1999/3132 as replaced: see NOTE 22): SI 2005/1379 reg 2(d).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(i) Scope of Control/85. The right of abode.

85. The right of abode.

The following persons have the right of abode in the United Kingdom¹:

130 (1) a British citizen²; and

131 (2) certain Commonwealth citizens³, that is to say:

7

7. (a) a Commonwealth citizen who immediately before 1 January 1983 was a Commonwealth citizen having the right of abode in the United Kingdom by virtue of being a Commonwealth citizen born to or legally adopted by a parent who at the time of the birth or adoption had citizenship of the United Kingdom and colonies by his birth in the United Kingdom or in any of the Islands⁴, and who has not ceased to be a Commonwealth citizen in the meanwhile⁵; or

8. (b) a Commonwealth citizen who immediately before 1 January 1983 was a Commonwealth citizen having the right of abode in the United Kingdom by virtue of being a woman who was a Commonwealth citizen and either was the wife of any such citizen as is mentioned in head (1) or head (2)(a) above⁶, or who had at any time been the wife of a person who was then a citizen of the United Kingdom and colonies or a Commonwealth citizen, or of a British subject who would have been such a citizen of the United Kingdom and colonies⁷ on the commencement of the British Nationality Act 1948⁸ had he not died previously⁹, provided that such a woman has not ceased to be a Commonwealth citizen in the meanwhile¹⁰.

8

Special provision is made restricting the right of abode of polygamous wives¹¹.

For the purposes of the Immigration Act 1971, 'British citizen' is generally to be construed so as to include Commonwealth citizens who have a right of abode in the United Kingdom¹².

A person seeking to enter the United Kingdom and claiming to have the right of abode there must prove such right by means of either a United Kingdom passport describing him as a British citizen or as a citizen of the United Kingdom and colonies having the right of abode in the United Kingdom or a certificate of entitlement¹³ issued by or on behalf of the United Kingdom government certifying such a right¹⁴.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Immigration Act 1971 s 2(1)(a) (s 2 substituted by the British Nationality Act 1981 s 39(2)). Those former citizens of the United Kingdom and colonies who were, immediately before 1 January 1983 (ie the date on which the relevant provisions of the British Nationality Act 1981 were brought into force: see para 5 note 1 ante), entitled to the right of abode in the United Kingdom under the Immigration Act 1971 s 2(1)(a)-(c) (as originally enacted) became British citizens on that date and thus continued to enjoy the right of abode: see the British Nationality Act 1981 s 11(1); and para 24 ante. As to British citizens and citizenship see paras 8, 23-43 ante. As to citizenship of the United Kingdom and colonies see paras 16-21 ante.

3 As to Commonwealth citizens see para 11 ante.

4 Immigration Act 1971 s 2(1)(b)(i) (as substituted: see note 2 supra). See also s 2(1)(d) (as originally enacted). For the meaning of 'the Islands' see para 83 note 12 ante.

5 Ibid s 2(1)(b)(ii) (as substituted: see note 2 supra). See also paras 14, 22 ante.

6 Ibid s 2(1)(b)(i) (as substituted: see note 2 supra). See also s 2(2)(a) (as originally enacted).

7 Ie under ibid s 2(1)(a), (b) (as originally enacted). As to British subjects see paras 9, 66-71 ante.

8 Ie 1 January 1949: see para 5 note 7 ante.

9 Immigration Act 1971 s 2(1)(b)(i) (as substituted: see note 2 supra); s 2(2)(b) (as originally enacted), British Nationality Act 1948 s 6(2) (repealed). Note however that a woman who was a citizen of the United Kingdom and colonies by registration on or after 28 October 1971 under the provision of the British Nationality Act 1948 which conferred the right for wives of citizens of the United Kingdom and colonies to acquire that citizenship by registration, did not have the right of abode by virtue of such registration within the meaning of the Immigration Act 1971 s 2(1)(a), (b) unless her marriage, by virtue of which she registered, took place before 28 October 1971: see s 2(2) (as originally enacted); and paras 14, 22 ante.

10 Ibid s 2(1)(b)(ii) (as substituted: see note 2 supra). See also paras 14, 22 ante.

11 For these purposes, a marriage may be polygamous although at its inception neither party has any spouse additional to the other: Immigration Act 1988 s 2(6). A polygamous wife having a right of abode in the United Kingdom (ie under the Immigration Act 1971 s 2(1)(b) as, or as having been, the wife of a man: (1) to whom she is or was polygamously married; and (2) who is or was such a citizen of the United Kingdom and colonies, Commonwealth citizen or British subject as was mentioned in s 2(2)(a) or s 2(2)(b) as in force before 1 January 1983: see the Immigration Act 1988 s 2(1)(a)) may not exercise that right of abode or obtain a certificate of entitlement (see note 13 infra) in respect of that right (see s 2(1), (2)), if:

48 (a) she has not, before 1 August 1988 (ie the date on which s 2 was brought into force: see s 12(4); and the Immigration Act 1988 (Commencement No 1) Order 1988, SI 1988/1133) and since her marriage, been in the United Kingdom (Immigration Act 1988 s 2(1)(b)); and

49 (b) there is another woman living (whether or not a woman to whom s 2 applies) who is the wife or widow of the same husband and who is, or has been, in the United Kingdom at any time since her marriage or who has been granted a certificate of entitlement (or a certificate treated as a certificate of entitlement by virtue of the British Nationality Act 1981 s 39(8) (see para 78 ante)) in respect of a right of abode, or an entry clearance to enter the United Kingdom as the wife of the husband (Immigration Act 1988 s 2(2), (8)).

Where a woman claims that she has been in the United Kingdom before 1 August 1988 and since her marriage, it is for her to prove that fact: s 2(5). Presence in the United Kingdom as a visitor or an illegal entrant (see para 151 post) and in circumstances in which a person is deemed by the Immigration Act 1971 s 11(1) (see para 93 post) not to have entered are to be disregarded for these purposes: Immigration Act 1988 s 2(7).

Section 2 does not preclude a woman from re-entering the United Kingdom if, since her marriage to the husband, she has at any time previously been in the United Kingdom and there was at that time no such other woman living: s 2(4).

Where a woman is precluded by s 2 from entering the United Kingdom in exercise of a right of abode, or from being granted a certificate of entitlement in respect of such a right, she is treated as having no right of abode: s 2(3).

No application by a woman for a certificate of entitlement in respect of a right of abode or for an entry clearance may be granted if another application for such a certificate or clearance is pending and that application is by a woman as the wife or widow of the same husband: s 2(9). Such an application is pending so long as the application and any appeal proceedings relating to it have not been finally determined: see s 2(10).

Provision is also made whereby polygamous wives cannot be granted leave to enter or remain in the United Kingdom as the spouse of a person present and settled there: see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') paras 277-280 (paras 278-280 as substituted); and para 122 post.

12 See the Immigration Act 1971 s 2(2) (as substituted: see note 2 supra).

13 'Certificate of entitlement' means such a certificate as is referred to in *ibid* s 3(9) (as substituted): s 33(1) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2); Immigration and Asylum Act 1999 s 167(2). As to certificates of entitlement see also para 78 ante. Certificates of entitlement were formerly known as certificates of patriality: see para 22 ante.

14 Immigration Act 1971 s 3(9) (substituted by the Immigration Act 1988 s 3(1)). A British visitor's passport is not sufficient for these purposes: *Minta v Secretary of State for the Home Department* [1992] Imm AR 380, CA. See also *Akewushola v Secretary of State for the Home Department* [2000] 2 All ER 148, [2000] 1 WLR 2295, [1999] Imm AR 594, CA (passport must be current). The production of a genuine United Kingdom passport, describing as a British citizen the person seeking to enter the United Kingdom, discharges the burden of proof, and the burden on the Secretary of State to prove that it was obtained by fraud is high: *R v Secretary of State for the Home Department, ex p Obi* [1997] Imm AR 420. The grant of a certificate of entitlement must not be refused arbitrarily or delayed without good reason: *R v Secretary of State for the Home Department, ex p Phansopkar* [1976] QB 606 at 613, [1975] 3 All ER 497 at 502, CA. There is a right of appeal against refusal to issue a certificate of entitlement under the Immigration and Asylum Act 1999 s 59(2): see para 173 post. A certificate of patriality issued before 1 January 1983 has effect after that date as if it is a certificate of entitlement, unless on that date the holder ceased to have the right of abode: see the British Nationality Act 1981 s 39(8) (as amended); and para 78 ante. Unless he holds a passport or certificate, a person has no right of appeal, on the ground that he has a right of abode in the United Kingdom, against a decision that he requires leave to enter: see the Immigration and Asylum Act 1999 s 60(1); and para 174 post. See also Immigration Rules paras 12-14; and para 93 post. As to passports and proof of national status see also para 78 ante. As to the Secretary of State see para 2 ante.

UPDATE

85 The right of abode

TEXT AND NOTES 13, 14--A person seeking to enter the United Kingdom and claiming to have the right of abode there must now prove such right by means of (1) a United Kingdom passport describing him as a British citizen; (2) a United Kingdom passport describing him as a British subject with the right of abode in the United Kingdom; (3) an ID card issued under the Identity Cards Act 2006 describing him as a British Citizen; (4) an ID card issued under the 2006 Act describing him as a British subject with the right of abode in the United Kingdom; or (5) a certificate of entitlement: Immigration Act 1971 s 3(9) (substituted by the Immigration, Asylum and Nationality Act 2006 s 30). 'Certificate of entitlement' means a certificate under the 2002 Act s 10 that a person has the right of abode in the United Kingdom: 1971 Act s 33(1) (amended by Nationality, Immigration and Asylum Act 2002 Act s 10(5)(b)).

The Secretary of State may by regulations make provision for the issue to a person of a certificate that he has the right of abode in the United Kingdom: s 10(1). The regulations may, in particular, (1) specify to whom an application must be made; (2) specify the place, which may be outside the United Kingdom, to which an application must be sent; (3) provide that an application must be accompanied by specified information; (4) provide that an application must be accompanied by specified documents; (5) specify the consequences of failure to comply with a requirement under any of heads (1)-(4); (6) provide for a certificate to cease to have effect after a period of time specified in or determined in accordance with the regulations; and (7) make provision about the revocation of a certificate: s 10(2) (amended by Immigration, Asylum and Nationality Act 2006 s 50(5), Sch 2 para 4, Sch 3). The regulations may make provision which applies generally or only in specified cases or circumstances, make different provision for different purposes, and include consequential, incidental or transitional provision: 2002 Act s 10(3). Any such regulations must be made by statutory instrument, and are subject to annulment in pursuance of a resolution of

either House of Parliament: s 10(4). Such regulations may, in particular, include provision saving, with or without modification, the effect of a certificate which is issued before the regulations come into force, and is a certificate of entitlement for the purposes of the 1971 Act ss 3(9), 33(1) as those provisions had effect in their unamended form: 2002 Act s 10(6). See the Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) Regulations 2006, SI 2006/3145 (amended by SI 2009/1892).

As to the amount of fees see Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 42; and PARA 6.

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/3. Immigration/(1) Control of Admission to the United Kingdom/(i) Scope of Control/86. Entry and departure of non-British citizens.

86. Entry and departure of non-British citizens.

Non-British citizens¹ may live, work and settle in the United Kingdom by permission and subject to such regulation and control of their entry into, stay in, and departure from the United Kingdom as is imposed by the Immigration Act 1971². Generally, a non-British citizen may not enter the United Kingdom without leave³, which may be given either for a limited or for an indefinite period⁴. The Secretary of State may by order⁵ make further provision with respect to the giving, refusing or varying of leave to enter or remain, in particular providing for leave to enter to be given or refused before the person concerned arrives in the United Kingdom⁶.

Where limited leave to enter or remain in the United Kingdom is granted, it may be varied, whether by restricting, enlarging or removing the limit on its duration, or by adding, varying or revoking conditions⁷. The Secretary of State may by order make provision with respect to the imposition of conditions⁸. A person's leave to enter or remain lapses on his leaving the common travel area⁹ unless within the period for which he had leave he returns to the United Kingdom in circumstances in which he is not required to obtain leave to enter¹⁰ or the Secretary of State orders otherwise¹¹.

The power to give or refuse leave to enter the United Kingdom is delegated to immigration officers¹² but the power to give leave to remain in the United Kingdom, or to vary any leave to remain as regards duration or conditions, is exercisable only by the Secretary of State¹³. Unless otherwise allowed by or under the Immigration Acts¹⁴, such powers must be exercised by notice in writing given to the person affected¹⁵. Immigration officers (and medical inspectors) are given considerable powers in relation to the examination of persons seeking leave to enter the United Kingdom¹⁶, the examination and detention of persons arriving in the United Kingdom¹⁷, and the removal of persons refused entry¹⁸.

A person named by or under a designated instrument as an excluded person, or of a description specified in such an instrument, must be refused leave to enter the United Kingdom and leave to remain in the United Kingdom¹⁹, except in specified circumstances²⁰.

The practice to be followed in the administration of the Immigration Act 1971 for regulating the entry into and stay in the United Kingdom of those who do not have the right of abode (including the period for which leave is given and the conditions attached in different circumstances) is contained in the Immigration Rules²¹. The Secretary of State may, and sometimes does, depart from the Immigration Rules or authorise an immigration officer to do so²². The Immigration Rules are required to provide for the admission (in such cases and subject to such restrictions and conditions as to length of stay or otherwise as may be provided) of

persons coming for the purpose of taking employment, or for purposes of study, or as visitors, or as dependants of persons lawfully in or entering the United Kingdom²³.

Persons who are not British citizens and who wish to leave the United Kingdom for a country or territory where they intend to reside permanently are eligible to receive payments towards their expenses in so doing, including travelling expenses for members of their families or households²⁴. The payments may be made by the Secretary of State in such cases as he may with the approval of the Treasury determine, but only where it is shown that it is in the interest of the person concerned to leave the United Kingdom and that he wishes to do so²⁵.

1 le those persons not expressed by the Immigration Act 1971 to have the right of abode in the United Kingdom: see s 1(1); and paras 84-85 ante. As to British citizens and citizenship see paras 8, 23-43 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Ibid s 1(2). Indefinite leave to enter or remain is deemed to have been given under the Immigration Act 1971 to those present and settled in the United Kingdom on 1 January 1973 (ie the date on which the Immigration Act 1971 was brought into force: see para 83 note 2 ante) (Immigration Act 1971 s 1(2); *R v Secretary of State for the Home Department, ex p Mughal* [1974] QB 313, [1973] 3 All ER 796, CA), or who had unconditional admission or leave to land under earlier legislation: Immigration Act 1971 s 34(2), (3). For these purposes, a person 'settled in the United Kingdom' is one who is ordinarily resident there without being subject under the immigration laws to any restriction on the period for which he may remain: see ss 33(1), (2A) (s 33(1) amended, and s 33(2A) added, by the British Nationality Act 1981 s 39(6), Sch 4 paras 3, 7). See also para 134 post. For the meaning of 'ordinarily resident' see para 134 note 1 post. As to whether a person is already settled in the United Kingdom see *R v Immigration Appeal Tribunal, ex p Coomasaru* [1983] 1 All ER 208, [1983] 1 WLR 14, CA. Note that a person will not be regarded as 'settled' during a period when he was entitled to an exemption from the requirement to obtain leave to enter or remain: see the Immigration Act 1971 ss 1(2), 8(5) (s 8(5) amended by the British Nationality Act 1981 Sch 4 para 5); and paras 87-92 post. As to settlement see also para 26 note 9 ante. For the meaning of 'immigration laws' see para 26 note 9 ante.

3 Immigration Act 1971 s 3(1)(a) (amended by the British Nationality Act 1981 s 39(6), Sch 4 paras 2, 4; and the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 44(1)). As to the non-British citizens who are exempt from this requirement see paras 87-92 post. As to illegal entrants see para 151 post. As to the power to give leave see para 140 post. A person who needs leave but who enters without it is in breach of the Immigration Act 1971 s 3(1)(a) (as amended) even if the entry is innocent, no mens rea or criminal intent being needed: *R v Governor of HM Remand Centre Ashford, ex p Bouzagou* [1983] Imm AR 69, CA; *R v Secretary of State for the Home Department, ex p Abdul Khaled* [1987] Imm AR 67; *Rehal v Secretary of State for the Home Department* [1989] Imm AR 576, CA. If leave to enter, whether indefinite or limited, is obtained by fraud or deception, the Secretary of State may either affirm or cancel the leave: *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL. Deception by a third party makes entry illegal: see the Immigration Act 1971 s 33(1) (definition of 'illegal entrant' substituted by the Asylum and Immigration Act 1996 s 12(1), Sch 2 para 4(1)). The standard of proof required to establish fraud is 'probability to a high degree' (*Khawaja v Secretary of State for the Home Department* supra), such a high standard being proportionate to the gravity of the issue of a person's liberty (*Ali v Secretary of State for the Home Department* [1984] 1 All ER 1009, [1984] 1 WLR 663, CA, in which it was held that a high standard of proof is particularly necessary where the appellate authority has decided a disputed issue of identity or nationality after hearing oral evidence, and the Secretary of State seeks to re-open the issue). As to proof of legality of entry see *R v Secretary of State for Home Affairs, ex p Badaiki* (1977) 121 Sol Jo 443; *R v Secretary of State for the Home Department, ex p Hussain* [1978] 2 All ER 423, [1978] 1 WLR 700, CA; *R v Secretary of State for the Home Department, ex p Choudhary* [1978] 3 All ER 790, [1978] 1 WLR 1177, CA. See also *R v Secretary of State for the Home Department, ex p Chowdhury* (10 April 1989, unreported), QBD, per Simon Brown J; *R v Secretary of State for the Home Department, ex p Adjepong* (17 July 1989, unreported), QBD, per Auld J. As to the Secretary of State see para 2 ante.

Entry clearance for a visit operates as leave to enter on each occasion the holder arrives in the United Kingdom during the period of its validity, and entry clearance in any other capacity, if specifying its purpose and endorsed with any conditions imposed on it or with indefinite leave to enter, takes effect as leave to enter on one occasion: see the Immigration Act 1971 s 3A(4) (s 3A added by the Immigration and Asylum Act 1999 s 1); the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, arts 2-4; and para 96 post.

4 Immigration Act 1971 s 3(1)(b). Limited leave may be given to enter or remain in the United Kingdom subject to any or all of: (1) a condition restricting employment or occupation in the United Kingdom; (2) a condition requiring the person to maintain and accommodate himself, and any dependants of his, without recourse to public funds; and (3) a condition requiring him to register with the police: s 3(1)(c) (substituted by the Asylum and Immigration Act 1996 s 12(1), Sch 2 para 1(1)). As to registration with the police see para 97 post. Non-British citizens who are nationals of EEA member states are, however, in general exempt from any such restrictions or requirements: see paras 225-237 post. Any employment restriction under the Immigration

Act 1971 s 34(3) (leave to enter given under previous legislation to be treated as leave given under the Immigration Act 1971: see note 2 supra) applying to an alien who is a national of a member state of the European Community has been revoked: see the Immigration (Revocation of Employment Restrictions) Order 1972, SI 1972/1647.

5 Any such order must be made by statutory instrument, may contain such incidental, supplemental, consequential and transitional provision as the Secretary of State considers appropriate, and may make different provision for different cases: Immigration Act 1971 ss 3A(10), (12), 3B(3), (5) (s 3A as added: see note 3 supra; s 3B added by the Immigration and Asylum Act 1999 s 2). No such order may be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House: ss 3A(13), 3B(6) (as so added). The Immigration Act 1971 and any provision made under it has effect subject to any order so made: ss 3A(11), 3B(4) (as so added).

6 See *ibid* s 3A(1), (2)(a) (as added: see note 3 supra); and the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 7(1), which provides that an immigration officer, whether or not in the United Kingdom, may give or refuse a person leave to enter at any time before his departure for, or in the course of his journey to, the United Kingdom.

7 Immigration Act 1971 s 3(3)(a); Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 31. If the limit on the duration of the leave is removed, any conditions attached to it cease to apply: Immigration Act 1971 s 3(3)(a). If a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State before his leave expires for it to be varied, and when it expires no decision has been taken on the application, his leave is to be treated as continuing until the end of the period allowed for appealing under rules made under the Immigration and Asylum Act 1999 Sch 4 para 3 (see para 173 post): Immigration Act 1971 s 3C(1), (2) (s 3C added by the Immigration and Asylum Act 1999 s 3). An application for variation of a person's leave to enter or remain in the United Kingdom may not be made while such leave is treated as so continuing, although this does not operate to prevent the variation of an application under the Immigration Act 1971 s 3C(1) (as added): s 3C(3), (4) (as so added). A variation does not take effect while an appeal against the decision on the variation is pending under the Immigration and Asylum Act 1999 s 61 (see para 175 post) or s 69(2) (see para 180 post) or the Special Immigration Appeals Commission Act 1997 s 2(1) (see para 184 post): Immigration and Asylum Act 1999 s 58(2)-(4), Sch 4 para 16; Special Immigration Appeals Commission Act 1997 s 2, Sch 2 para 3C (Sch 2 paras 3C, 3D added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 118, 126). While any such appeal is pending the leave to which the appeal relates, and any conditions subject to which it was granted, continue to have effect, and a person may not make an application for a variation of his leave to enter or remain while that leave is treated as so continuing: Immigration and Asylum Act 1999 Sch 4 para 17(1), (2); Special Immigration Appeals Commission Act 1997 Sch 2 para 3D(1), (2) (as so added). When leave to enter or remain is varied an entry must be made in the applicant's passport or travel document (and registration certificate where appropriate) or the decision may be made known in writing in some other appropriate way: Immigration Rules para 31.

As from a day to be appointed it is provided that where a form is prescribed or where procedural or other steps are prescribed for a particular kind of application under the Immigration Act 1971 the application must be made in that form and those steps must be taken: s 31A (prospectively added by the Immigration and Asylum Act 1999 s 165). At the date at which this volume states the law no such day had been appointed.

In most cases, a person's leave to enter will not lapse on leaving the United Kingdom (see the text and notes 10-11 *infra*), but if it does, the limitation on and any conditions attached to a person's leave (whether imposed originally or on a variation) will, if not superseded, apply also to any subsequent leave he may obtain after an absence from the United Kingdom within the period limited for the duration of the earlier leave: Immigration Act 1971 s 3(3)(b) (amended by the Immigration Act 1988 s 10, Schedule para 1). As to the variation of leave see further para 137 post.

8 Immigration Act 1971 ss 3A(1), (2)(c), 3B(1), (2)(b) (as added: see notes 3, 5 supra). At the date at which this volume states the law no order had been made.

9 The common travel area comprises the United Kingdom, the Channel Islands, the Isle of Man, and the Republic of Ireland: see *ibid* s 1(3); and para 94 post.

10 *Ibid* s 3(4). If the person does so return, any limitation on his leave or conditions attached to it will continue to apply: s 3(4). Notwithstanding this, leave given to a person under the Immigration Act 1971 to enter or remain in the United Kingdom does not continue to apply on his return to the United Kingdom after an absence if he has during that absence entered any of the Islands in circumstances in which he is required under the laws of that Island to obtain leave to enter: s 9(1), Sch 4 para 2.

For the purposes of s 3(4), a person seeking to leave the United Kingdom through the tunnel system who is refused admission to France or Belgium is treated as having gone to a country outside the common travel area: s 3(4A) (added for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(1), (2)(a); and the Channel

Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). For the meaning of 'tunnel system' see para 196 note 3 post.

11 Immigration Act 1971 s 3A(1), (2)(d), 3B(1), (2)(c) (as added: see notes 3, 5 supra). In pursuance of this power the Secretary of State has ordered that where a person has leave to enter or remain in the United Kingdom (including leave to enter conferred by means of an entry clearance under the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 2 (see para 96 post) and leave to remain which was conferred by means of an entry clearance (other than a visit visa), or was given by an immigration officer or the Secretary of State for a period exceeding six months), that leave does not lapse on his going to a country or territory outside the common travel area: art 13(1), (2), (10); and see Immigration Rules para 20A (added by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 7). This does not apply where a limited leave has been varied by the Secretary of State and, following the variation, the period of leave remaining is six months or less: Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 13(3). Leave which does not lapse remains in force either indefinitely (if it is unlimited) or until the date on which it would otherwise have expired (if limited), but where the holder has stayed outside the United Kingdom for a continuous period of more than two years, the leave (where it is unlimited) or any leave then remaining (where the leave was limited) will thereupon lapse: art 13(4)(a). Leave to enter which remains in force under art 13 is subject to cancellation by an immigration officer (situated either within or outside the United Kingdom); and leave to remain may be cancelled by the Secretary of State: see Immigration Rules para 17B (added by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 5). Any conditions to which leave is subject are suspended while the holder is outside the United Kingdom: Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 13(4)(b). For the purposes of the Immigration Act 1971 Sch 2 para 2 (as amended) and Sch 2 para 2A (as added) (examinations by immigration officers, and medical examination) (see para 143 post) leave to remain which remains in force under the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 13 is treated, on the holder's arrival in the United Kingdom, as leave to enter which has been granted to the holder before his arrival: art 13(5).

12 Immigration Act 1971 s 4(1). The Secretary of State may grant or refuse leave to enter to a person who has claimed asylum, or made a human rights allegation or has sought leave to enter outside the Immigration Rules: see the Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 2; and para 96 post. Immigration officers may suspend or cancel leave granted before arrival: see the Immigration Act 1971 s 4, Sch 2 para 2A (added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 57). As to the grounds on which such leave may be cancelled see para 137 post. 'Immigration officer' includes a customs officer acting as an immigration officer: see Immigration Rules para 6.

13 Immigration Act 1971 s 4(1). The Secretary of State may, with the consent of the Treasury, make regulations prescribing fees to be paid in connection with any application for indefinite leave to remain in the United Kingdom: see the Immigration Act 1988 s 9 (prospectively repealed by the Immigration and Asylum Act 1999 s 169(1), (3), Sch 14, paras 83, 86, Sch 16). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517. At the date at which this volume states the law no such regulations had been made.

As from a day to be appointed, the power to make regulations is extended so that fees may additionally be prescribed in connection with applications for leave to remain, applications for variation of leave to enter or remain (Immigration and Asylum Act 1999 s 5(1)(a), (b)), or applications for an indefinite leave stamp (ie a stamp which indicates that the applicant has been granted indefinite leave to enter or remain in the United Kingdom) to be fixed on the applicant's passport (or other travel document) as the result of the renewal or replacement of his previous passport or document (s 5(1)(c), (5)). If such a fee is payable, an application may not be entertained unless the fee is paid (s 5(2)), although the regulations may also provide for no fee to be payable in prescribed circumstances (s 5(3)(b)), in which case the Secretary of State must nonetheless entertain that part of an application for which no fee is payable (s 5(4)). A fee prescribed in connection with an application is not, however, payable if the application is made on the basis that the applicant is making a claim for asylum (within the meaning of s 94(1): see para 150 note 11 post) which either has not been determined or has been granted, or is a dependant of such a person (s 5(3)(a), (6), (7)). At the date at which this volume states the law no day had been appointed for the commencement of s 5 and no such regulations had been made. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

Any sums received by the Secretary of State by virtue of the Immigration Act 1988 or the Immigration and Asylum Act 1999 s 5 are to be paid into the Consolidated Fund: Immigration Act 1988 s 11(2); Immigration and Asylum Act 1999 s 168(2). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

Where the holder of leave which remains in force under the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 13 is outside the United Kingdom, the Secretary of State may vary that leave, including any conditions to which it is subject, in the form and manner permitted for the giving of leave to enter (art 13(6)) or he (if it is leave to remain) or an immigration officer (if it is leave to enter), may cancel it (art 13(7)). Where an immigration officer exercises his power to cancel leave to enter under art 13(7) in respect of an entry clearance which has effect as leave to enter (see para 96 post), the entry clearance ceases to have effect: art 6(1); Immigration Rules para 30B (added by Statement of Changes in Immigration Rules (HC Paper (1999-2000)

no 704) para 9). In order to determine whether to vary (and if so, in what manner) or cancel leave which remains in force under the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 13 and which is held by a person who is outside the United Kingdom, an immigration officer or, as the case may be, the Secretary of State may seek such information, and the production of such documents or copy documents, as an immigration officer would be entitled to obtain in an examination under the Immigration Act 1971 Sch 2 para 2 (as amended) and Sch 2 para 2A (as added) (see para 143 post), and may also require the holder of the leave to supply an up to date medical report: Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 13(8). Failure to supply any information, documents or medical report requested by an immigration officer or the Secretary of State is a ground in itself for cancellation of leave: art 13(9).

14 For the meaning of 'the Immigration Acts' see para 83 ante.

15 Immigration Act 1971 s 4(1) (amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 45). The Secretary of State may by order make further provision with respect to the form or manner in which leave to enter or remain in the United Kingdom may be given, refused or varied: Immigration Act 1971 ss 3A(1), (2)(a), (b), 3B(1), (2)(a) (as added: see notes 3, 5 supra). At the date at which this volume states the law this power had not been exercised so far as relating to leave to remain but, in relation to leave to enter, the Secretary of State has ordered that a notice giving or refusing leave to enter may, instead of being given in writing as required by the Immigration Act 1971, be given by facsimile or electronic mail or, in the case of a notice giving or refusing leave to enter the United Kingdom as a visitor, orally, including by means of a telecommunications system: Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 8(1)-(3). 'Leave to enter the United Kingdom as a visitor' means leave to enter as a visitor under the Immigration Rules for a period not exceeding six months, subject to conditions prohibiting employment and recourse to public funds (within the meaning of the Immigration Rules: Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 8(4)). For the meaning of 'public funds' see para 99 note 8 post.

Leave to enter may be given or refused to a person by notice given (in such form and manner as is permitted by the Immigration Act 1971 or the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161) to a responsible third party acting on that person's behalf (art 9(1)), and such a notice may refer to a person to whom leave is being granted or refused either by name or by reference to a description or category of persons which includes him (art 9(2)). 'Responsible third party' means a person appearing to an immigration officer to be: (1) in charge of a group of people arriving in the United Kingdom together or intending to arrive in the United Kingdom together; (2) a tour operator; (3) the owner or agent of a ship, aircraft, train, hydrofoil or hovercraft; (4) the person responsible for the management of a control port or his agent; or (5) an official at a British diplomatic mission or at a British consular post or at the office of any person outside the United Kingdom and Islands who has been authorised by the Secretary of State to accept applications for entry clearance: art 1(3). 'Tour operator' means a person who, otherwise than occasionally, organises and provides holidays to the public or a section of the public; and 'control port' means a port in which a control area is designated under the Immigration Act 1971 Sch 2 para 26(3) (see para 145 post): Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 1(3). For the meaning of 'United Kingdom and Islands' see para 83 note 12 ante. Where a notice refusing leave to enter is given orally under art 8(3) or to a third party under art 9(1), an immigration officer must as soon as practicable give the person a notice in writing stating that he has been refused leave to enter the United Kingdom and stating the reasons for the refusal: art 10(1). Such a notice is not required where he serves a notice in respect of the refusal under regulations made under the Immigration and Asylum Act 1999 Sch 4 para 1 (see para 187 post): Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 10(2). Any notice required to be given by art 10(1) may be delivered or sent by post to either the person's last-known or usual place of abode or any address provided by him for receipt of the notice: art 10(3). A person alleging that he has leave to enter the United Kingdom by virtue of a notice given orally or to a responsible third party (ie under art 8(3) or art 9) bears the burden of showing the manner and date of his entry into the United Kingdom: art 11. Where: (a) an immigration officer has commenced examination of a person under the Immigration Act 1971 Sch 2 para 2(1)(c) (as substituted) (see para 143 post); (b) that examination has been adjourned, or the applicant has been required to submit to further examination (ie under Sch 2 para 2(3): see para 143 post), while further inquiries, including, where the applicant has made an asylum claim, as to the Secretary of State's decision on that claim, are made; and (c) on the completion of those inquiries, the immigration officer considers that he can decide whether to give or refuse leave to enter without interviewing the applicant further, then any notice giving or refusing leave to enter which is on any date thereafter sent by post to the applicant (or is communicated to him in a permitted form or manner) is regarded for the purposes of the Immigration Act 1971 as having been given within the period of 24 hours specified in Sch 2 para 6(1) (see para 148 post): Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 12.

Where an application for variation of leave is made but the Secretary of State's reply does not comply with the Immigration Act 1971 s 4(1), the notice is a nullity and the person's leave is governed by the Immigration (Variation of Leave) Order 1976, SI 1976/1572 (as amended) (if the date of the decision on the application was earlier than 2 October 2000) or the Immigration Act 1971 s 3C (as added: see note 7 supra) (if the date of the decision on the application was 2 October 2000 or later): *Ah-Time v Secretary of State for the Home Department* [1989] Imm AR 340 (refugee's variation notice accidentally omitted to specify period of leave granted to him; there was held to be no indefinite leave to remain). Notice which is irregular (eg which omits rights of appeal) may be good notice under the Immigration Act 1971 and defects may be corrected: *Labiche v Secretary of State for the Home Department* [1991] Imm AR 263, CA. Notice in writing given to the solicitor of a

person refused leave to enter was held sufficient to comply with the similar requirement of the Commonwealth Immigrants Act 1962 Sch 1 para 2(1) (repealed) (see *R v Chief Immigration Officer of Manchester Airport, ex p Begum* [1973] 1 All ER 594, [1973] 1 WLR 141, CA), and a letter to a claimant's member of Parliament has been held to have amounted to a decision to grant indefinite leave to remain (see *R (on the application of Hashimi) v Secretary of State for the Home Department* [2002] EWCA Civ 728). The requirement of written notice is directory, not mandatory: *R v Secretary of State for Home Affairs, ex p Badaiki* (1977) 121 Sol Jo 443 (a stamp on a passport is sufficient written notice) (note, however, *Rafiq v Secretary of State for the Home Department* [1998] 1 FCR 293, [1998] Imm AR 193, CA, in which it was held that notice was not given where the applicant's passport was stamped but the notice was cancelled before the passport was returned to the applicant). Where the stamp is illegible it is not effective notice of leave for the purposes of the Immigration Act 1971 and the position cannot be rectified by extrinsic evidence: *Minton v Secretary of State for the Home Department* [1990] Imm AR 199, CA. See also *R v Secretary of State for the Home Department, ex p Tolba*, *R v Immigration Appeal Tribunal, ex p Acquah* [1988] Imm AR 78; *R v Immigration Appeal Tribunal, ex p Ahluwalia* [1979-80] Imm AR 1 (where a letter from the Home Office giving 'authority to remain in the United Kingdom pending a decision' was regarded as written notice under the Immigration Act 1971 s 4(1)).

Any document purporting to be an order, notice or direction made or given by the Secretary of State for the purposes of the Immigration Acts and to be signed by him or on his behalf, and any document purporting to be a certificate of the Secretary of State so given and to be signed by him or on his behalf, is to be received in evidence and, until the contrary is proved, is to be deemed to be made or issued by him: Immigration Act 1971 s 32(2) (amended by Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 54(1), (2)). Prima facie evidence of any such order, notice, direction or certificate may be given in any legal proceedings or other proceedings under the Immigration Acts by the production of a document bearing a certificate purporting to be signed by or on behalf of the Secretary of State and stating that the document is a true copy of the order, notice, direction or certificate: Immigration Act 1971 s 32(3) (amended by Immigration and Asylum Act 1999 Sch 14 paras 43, 54(1), (3)).

16 In order to determine whether to give leave to enter the United Kingdom to a person prior to his arrival in the United Kingdom under the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 7 (see the text and note 6 supra), and if so, for what period and subject to what conditions, an immigration officer may seek such information, and the production of such documents or copy documents, as he would be entitled to obtain in an examination under the Immigration Act 1971 Sch 2 para 2 (as amended) and Sch 2 para 2A (as added) (see para 143 post) (Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 7(2)), and may also require the person seeking leave to supply an up to date medical report (art 7(3)). Failure by a person seeking leave to supply any information, documents, copy documents or medical report requested by an immigration officer under art 7 is a ground in itself for refusal of leave: art 7(4).

17 As to the powers of examination, search and detention of persons arriving in the United Kingdom see para 143 post.

18 See the Immigration Act 1971 s 4(2), Sch 2; and paras 140-159 post.

19 Ibid s 8B(1), (4) (s 8B added by Immigration and Asylum Act 1999 s 8). The Secretary of State may by order designate an instrument if it is a resolution of the Security Council of the United Nations or an instrument made by the Council of the European Union and it requires or recommends that a person is not to be admitted to the United Kingdom (however that requirement or recommendation is expressed): s 8B(5) (as so added). The following instruments have been designated and all persons named in them, or of a description specified in them, are accordingly excluded from the United Kingdom: UN Resolution 1390 (2002) of 16 January 2002 (Afghanistan); UN Resolution 1127 (1997) of 28 August 1997 (Angola); UN Resolution 1343 (2001) of 7 March 2001 (Liberia); UN Resolution 1171 (1998) of 5 June 1998 (Sierra Leone); Common Position 97/759/CFSP of 30 October 1997 (Angola); Common Position 96/635/CFSP of 28 October 1996 (Burma); Common Position 2000/346/CFSP of 26 April 2000 (Burma); Common Position 98/240/CFSP of 19 March 1998 (Federal Republic of Yugoslavia); Common Position 99/318/CFSP of 10 May 1999 (Federal Republic of Yugoslavia); Common Position 2000/56/CFSP of 24 January 2000 (Federal Republic of Yugoslavia); Common Position 2000/696/CFSP of 10 November 2000 (Federal Republic of Yugoslavia); Common Position 2001/155/CFSP of 26 February 2001 (Federal Republic of Yugoslavia); Common Position 98/409/CFSP of 29 June 1998 (Sierra Leone); Common Position 2002/145/CFSP of 18 February 2002 (Zimbabwe): see the Immigration (Designation of Travel Bans) Order 2000, SI 2000/2724, art 2, Schedule (Schedule substituted by SI 2001/2377; and amended by SI 2002/192; SI 2002/795). An order under the Immigration Act 1971 s 8B (as added) must be made by statutory instrument which must be laid before Parliament without delay: s 8B(6), (7) (as so added). On becoming an excluded person, a person's existing leave to enter or remain is cancelled and his exemption from the provisions of the Immigration Act 1971 as a result of s 8(1), (2) or (3) (special exemptions from control) (see paras 87-92 post) ceases: s 8B(2), (3) (as so added).

20 See s 8B(6) (as added: see note 19 supra); and the Immigration (Designation of Travel Bans) Order 2000, SI 2000/2724, art 3, which provides that the Immigration Act 1971 s 8B(1)-(3) (as added) (see the text and note 19 supra) does not apply in any case where failure to apply those provisions would not be contrary to the United Kingdom's obligations under any designated instrument or where to apply those provisions would be contrary to the United Kingdom's obligations under the Convention for the Protection of Human Rights and Fundamental

Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) or the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906).

21 See the Immigration Act 1971 s 3(2); and para 83 note 3 ante.

22 See *R v Secretary of State for the Home Department, ex p Rajinder Kaur* [1987] Imm AR 278, DC. Extra-statutory discretion is exercised in individual cases where compelling grounds for waiver of particular requirements exist, and is also formulated into policy in the form of the Immigration Directorates' Instructions, the Asylum Policy Instructions and the Nationality Instructions, which have been published by the Immigration and Nationality Directorate. Where a policy is formulated, any departure from it must be explained: *R v Secretary of State for the Home Department, ex p Amankwah* [1994] Imm AR 240. The existence of a policy may ground a legitimate expectation that it will be invoked in the immigrant's favour (*Gyeabour v Secretary of State for the Home Department* [1989] Imm AR 94, IAT), and failure to take a policy into account, or misapplication of a policy, or a refusal by the Secretary of State to depart from the Immigration Rules where a policy is in place, may ground an appeal to the appellate authority (*Abdi v Secretary of State for the Home Department* [1996] Imm AR 148, CA). Note, however, that a published policy will not always ground an appeal, for example where applicants fail to satisfy the preconditions for consideration under the policy: *Hersi v Secretary of State for the Home Department* [1996] Imm AR 569, CA. As to legitimate expectation cf para 77 ante.

23 Immigration Act 1971 s 1(4). The categories now provided for in the Immigration Rules are, in fact, considerably wider and more diverse than those specified in the Immigration Act 1971. It is not required that uniform provision is made as regards admission of persons for a purpose or in a capacity specified in s 1(4); in particular, account may be taken of citizenship or nationality (ie the Immigration Rules may discriminate on the ground of citizenship or nationality): see the Immigration Act 1971 s 3(2); and *R v Secretary of State for the Home Department, ex p Sureshkumar* [1986] Imm AR 420 (Commonwealth citizens may be treated less favourably and a requirement for them to have a visa is *intra vires*). Although it is unlawful for a public authority in carrying out any of its functions to do any act which constitutes racial discrimination (see the Race Relations Act 1976 s 19B(1) (ss 19B, 19D, 19E added by the Race Relations (Amendment) Act 2000 s 1)), the Race Relations Act 1976 s 19B (as added) does not make it unlawful for a relevant person to discriminate against another person on grounds of nationality or ethnic or national origin in carrying out immigration and nationality functions (see s 19D(1) (as so added)). 'Relevant person' means a Minister of the Crown acting personally or any other person acting in accordance with a relevant authorisation (s 19D(2) (as so added)); 'relevant authorisation' means a requirement imposed or express authorisation given with respect to a particular case or class of case by a Minister of the Crown acting personally or by any of the Immigration Acts (excluding certain provisions of the Immigration Act 1971 relating to offences, the British Nationality Act 1981, the British Nationality (Falkland Islands) Act 1983, the British Nationality (Hong Kong) Act 1990, the Hong Kong (War Wives and Widows) Act 1996, the British Nationality (Hong Kong) Act 1997, and the Special Immigration Appeals Commission Act 1997), or by any instrument made under or by virtue of any of those enactments, and includes any provision made under the European Communities Act 1972 s 2(2), or any provision of European Community law, which relates to the subject-matter of any of those enactments (Race Relations Act 1976 s 19D(3), (5) (as so added)); and 'immigration and nationality functions' are functions exercisable by virtue of any of those enactments (s 19D(4), (5) (as so added)). The race monitor must monitor the likely effect on the operation of the exception in s 19D (as added) of any relevant authorisation relating to the carrying out of immigration and nationality functions which has been given by a Minister of the Crown acting personally, and the operation of that exception in relation to acts which have been done by a person acting in accordance with such an authorisation see s 19E(3) (as so added). As to the race monitor see further para 140 note 12 post.

Entry clearance, leave to enter or remain or a variation of leave to enter or remain must be refused if the application is for a purpose not covered by the Immigration Rules: Immigration Rules paras 320(1), 322(1).

24 Immigration Act 1971 s 29(1) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2).

25 Immigration Act 1971 s 29(2). Expenses incurred by the Secretary of State under s 29 are to be defrayed out of money provided by Parliament: s 31(d). Persons repatriated under s 29 are not eligible for readmission as returning residents: Immigration Rules para 18(iii).

UPDATE

86 Entry and departure of non-British citizens

TEXT AND NOTES 1-11--The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if (1) the person is liable to deportation, but cannot be deported for legal reasons; (2) the leave was obtained by deception and the person would be liable to removal because of the deception, but the person cannot be

removed for legal or practical reasons; or (3) the person, or someone of whom he is a dependant, ceases to be a refugee as a result of (a) voluntarily availing himself of the protection of his country of nationality; (b) voluntarily re-acquiring a lost nationality; (c) acquiring the nationality of a country other than the United Kingdom and availing himself of its protection, or (d) voluntarily establishing himself in a country in respect of which he was a refugee: Nationality, Immigration and Asylum Act 2002 s 121 s 76(1)-(3). For these purposes 'indefinite leave' has the meaning given by the Immigration Act 1971 s 33(1); 'liable to deportation' has the meaning given by s 3(5), (6) (see PARA 160); 'refugee' has the meaning given by the Convention relating to the Status of Refugees and its Protocol (see PARA 239); and 'removed' means removed from the United Kingdom under the 1971 Act Sch 2 para 9 or 10 (see PARA 152), or under the Immigration and Asylum Act 1999 s 10(1)(b) (see PARA 154): 2002 Act s 76(4). A power under head (1) or (2) to revoke leave may be exercised in respect of leave granted before s 76 comes into force (ie 10 February 2003), in reliance on anything done before that date: s 76(5). A power under head (3) to revoke leave may be exercised in respect of leave granted before s 76 comes into force, but only in reliance on action taken after that provision comes into force: s 76(6).

NOTE 4--Also, head (4) a condition restricting his studies in the United Kingdom; (5) a condition requiring him to report to an immigration officer or the Secretary of State; and (6) a condition about residence: 1971 Act s 3(1)(c) (amended by UK Borders Act 2007 s 16, Schedule; Borders, Citizenship and Immigration Act 2009 s 50(1)).

NOTE 7--1971 Act s 3C amended: Immigration, Asylum and Nationality Act 2006 s 11(1)-(4). See further 1971 Act s 3D (added by 2006 Act s 11(5)) (continuation of leave following revocation). See also s 47 (removal: persons with statutorily extended leave).

For the purpose of the 1971 Act s 3C an application for variation of leave is decided (1) when notice of the decision has been given in accordance with regulations made under the 2002 Act s 105; or (2) where no such notice is required, when notice of the decision has been given in accordance with the 1971 Act s 4(1): Immigration (Continuation of Leave) (Notices) Regulations 2006, SI 2006/2170, reg 2.

Day now appointed in relation to 1971 Act s 31A: SI 2000/1282, SI 2003/1862. 1971 Act s 31A amended: Nationality, Immigration and Asylum Act 2002 s 121.

For regulations made under the 1971 Act s 31A, see now the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2007, SI 2007/882 (amended by SI 2007/1122).

The effect of the 1971 Act s 3C is not to extend the period for which a person has been lawfully employed for the purposes of Community law or an Association Agreement: *R (on the application of Oczelik) v Secretary of State for the Home Department* [2009] EWCA Civ 260, [2009] All ER (D) 81 (May).

NOTE 10--SI 2004/1405 art 7 amended: SI 2007/3579.

NOTE 13--Repeal of 1999 Act s 9 now in force: SI 2003/1469. 1999 Act s 5 repealed: Immigration, Asylum and Nationality Act 2006 Sch 2 para 3, Sch 3. Fees now prescribed in relation to 1999 Act s 5(1)(a), (b) see the Immigration (Application Fees) Order 2005, SI 2005/582 which specifies for the purposes of the Finance (No 2) Act 1987 s 102(3), (4) the functions and matters to be taken into account in fixing the fees. For 'an indefinite leave stamp ... previous passport or document' read 'the fixing of a limited leave stamp (ie a stamp, sticker or other attachment which indicates that a person has been granted limited leave to enter or remain in the United Kingdom) or indefinite leave stamp (ie a stamp, sticker or other attachment which indicates that a person has been granted indefinite leave to enter or remain in the United Kingdom) on a passport or other document issued to the applicant where the stamp was previously

fixed on another passport or document issued to the applicant: 1999 Act s 5(1)(c), (5) (both substituted by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 43). As to the amount of fees see Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 42; and PARA 6. See the Immigration (Leave to Remain) (Fees) Regulations 2003, SI 2003/1711 (amended by SI 2004/580, SI 2004/3105, SI 2005/654).

NOTE 15--An immigration officer may authorise a person to be a person who may obtain leave to enter the United Kingdom by passing through an automated gate: see the Immigration (Leave to Enter and Remain) (Amendment) Order 2000, SI 2000/1161, art 8A (added by SI 2010/957). No notice is to be given under SI 2000/1161 art 8 where a person is given leave to enter the United Kingdom by passing through an automated gate in accordance with art 8A: art 8(5) (added by SI 2010/957).

NOTE 19--SI 2000/2724 Schedule now substituted by SI 2009/3044.

NOTE 23--The reference is now to immigration functions: Race Relations Act 1976 s 19D(1) (amended by Nationality, Immigration and Asylum Act 2002 s 6(2)). In the definition of 'relevant authorisation', the enactments by which authorisation may now be given are the Immigration Acts (excluding certain provisions of the Immigration Act 1971 relating to offences), the Special Immigration Appeals Commission Act 1997, provision made under the European Communities Act 1972 s 2(2) which relates to immigration or asylum, and any provision of Community law which relates to immigration or asylum: 1976 Act s 19D(5) (s 19D(4), (5) substituted by Nationality, Immigration and Asylum Act 2002 s 6(3)). In the 1976 Act s 19E(3) (amended by 2002 Act s 6(4)) the reference is now to immigration functions. 'Immigration functions' means functions exercisable by virtue of any of the enactments mentioned in the 1976 Act s 19D(5): s 19D(4). Race monitor replaced by Border and Immigration Inspectorate: see PARA 140B.

TEXT AND NOTES 24, 25--1971 Act ss 29, 31(d) repealed: 2002 Act s 58(5), Sch 9. The Secretary of State may make arrangements to assist voluntary leavers, and to assist individuals to decide whether to become voluntary leavers: s 58(2). A person is a 'voluntary leaver' if (1) he is not a British citizen or an EEA national; (2) he leaves the United Kingdom for a place where he hopes to take up permanent residence (his 'new place of residence'), and (3) the Secretary of State thinks that it is in the person's interest to leave the United Kingdom and that the person wishes to leave: s 58(1). The Secretary of State may, in particular, make payments, whether to voluntary leavers or to organisations providing services for them, which relate to (a) travelling and other expenses incurred by or on behalf of a voluntary leaver, or a member of his family or household, in leaving the United Kingdom; (b) expenses incurred by or on behalf of a voluntary leaver, or a member of his family or household, on or shortly after arrival in his new place of residence; (c) the provision of services designed to assist a voluntary leaver, or a member of his family or household, to settle in his new place of residence; and (d) expenses in connection with a journey undertaken by a person, with or without his family or household, to prepare for, or to assess the possibility of, his becoming a voluntary leaver: s 58(3). For the purposes of head (1) above, 'EEA national' means a national of a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as it has effect from time to time): s 58(4).

(ii) Exemption from Control

87. Exemption from control: crews of ships, aircraft and trains.

Where a member of the crew¹ of a ship², aircraft³, through train⁴ or shuttle train⁵ arrives at a place in the United Kingdom⁶ under an engagement requiring him to leave on that ship as a member of the crew, or to leave within seven days on that or another aircraft, through train or shuttle train as a member of its crew (or the crew of another such train), he may enter the United Kingdom at that place without leave and remain until the departure of the ship, aircraft or train on which he is required by his engagement to leave⁷.

1 'Crew', in relation to a ship or aircraft, means all persons actually employed in the working or service of the ship or aircraft, including the captain; and, in relation to a through train or shuttle train, means all persons on the train who are actually employed in its service or working, including the train manager: Immigration Act 1971 s 33(1) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(10); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). See also notes 2-5 infra. 'Member of the crew' is to be construed accordingly; and 'captain' means master (of a ship) or commander (of an aircraft): Immigration Act 1971 s 33(1). 'Train manager', in relation to a through train or shuttle train, means the person designated as train manager by the person operating the international service on which the train is engaged: Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 2(1), Sch 1; Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 2(1), Sch 1. 'International service' means any service (including a shuttle service (see note 5 infra)) for the carriage of passengers or goods by way of the tunnel system: Channel Tunnel Act 1987 s 13(6); Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 1; Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, Sch 1. For the meaning of 'tunnel system' see para 196 note 3 post.

2 'Ship' includes every description of vessel used in navigation: Immigration Act 1971 s 33(1). The provisions of the Immigration Act 1971 specifically relating to members of a ship's crew do not apply in relation to any floating structure not being a ship: s 11(3).

3 'Aircraft' for the purposes of the Immigration Act 1971 includes hovercraft: s 33(1). As to the operational staff of airlines see *Attivor v Secretary of State for the Home Department* [1988] Imm AR 109, CA.

4 'Through train' means a train, other than a shuttle train (see note 5 infra), which is engaged on an international service (see note 1 supra) for the purposes of the Channel Tunnel Act 1987 ss 11, 12 (regulation of the tunnel system and controls on board international services): Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 1; Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, Sch 1.

5 'Shuttle train' means a train designed for the purpose of carrying road traffic between Cheriton, Folkestone and Fréthun by way of the tunnels; and 'shuttle service' means a service operated by means of a shuttle train: Channel Tunnel Act 1987 s 1(9); Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 1.

6 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

7 Immigration Act 1971 s 8(1) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(4); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). Such a person may not, however, enter the United Kingdom without leave where a deportation order (see para 160 et seq post) made against him is in force, where he has at any time been refused leave to enter the United Kingdom and has not since then been given leave to enter or remain, or where an immigration officer requires him to submit to examination: Immigration Act 1971 s 8(1)(a)-(c). As to the duty to submit to examination see para 143 post.

Where a person having limited leave to enter or remain in the United Kingdom becomes entitled to an exemption under s 8(1), that leave continues to apply after that person ceases to be entitled to the exemption, unless it has by then expired: s 8(5).

A person who enters the United Kingdom lawfully by virtue of s 8(1) and seeks to remain beyond the limited time is to be treated as seeking to enter the United Kingdom: s 11(5).

UPDATE

87 Exemption from control: crews of ships, aircraft and trains

NOTES 1, 7--SI 2004/1405 art 7 amended: SI 2007/3579.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(ii) Exemption from Control/88. Exemption from control: members of diplomatic missions.

88. Exemption from control: members of diplomatic missions.

The statutory provisions relating to non-British citizens¹ do not apply to any person so long as he is a member of a diplomatic mission², or a member of the family forming part of the household of such a member, or a person otherwise entitled to the like immunity from jurisdiction³ as is conferred by the Immigration Act 1971 on a diplomatic agent⁴.

The Secretary of State⁵ may by order⁶ exempt any person or class of persons from all or any of the statutory provisions relating to non-British citizens⁷. Under this power, consular officers⁸ in the service of a state with which consular conventions have been concluded by Her Majesty⁹, consular employees¹⁰ in such service, and any member of any such person's family forming part of his household, have been exempted from any provision of the Immigration Act 1971 relating to persons who are not British citizens¹¹; and consular officers (other than honorary consular officers) and consular employees in the service of states other than those specified as being states with which consular conventions have been concluded¹², and any member of any such person's family forming part of his household, have been exempted from any such provision except any provision relating to deportation¹³.

1 See paras 83-85 ante. As to British citizens see paras 8, 23-43 ante.

2 Ie the head or a member of staff of a diplomatic mission: see the Diplomatic Privileges Act 1964 s 2, Sch 1 art 1(b); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 265 et seq. A member of a mission other than a diplomatic agent (ie the head of a mission or a member of its diplomatic staff: Diplomatic Privileges Act 1964 Sch 1 art 1(e)) does not count as a member of a mission unless he was resident outside the United Kingdom, and was not in the United Kingdom, when he was offered a post as such a member and has not ceased to be such a member after having taken up the post: Immigration Act 1971 s 8(3A) (added by the Immigration Act 1988 s 4; and substituted by the Immigration and Asylum Act 1999 s 6). The effect of this provision is to prevent locally recruited staff from obtaining exemption from control by leaving the United Kingdom and returning while in post: staff recruited after 1 March 2000 (ie the date on which the amendment effected by the Immigration and Asylum Act 1999 s 6 was brought into force: see the Immigration and Asylum Act 1999 (Commencement No 2 and Transitional Provisions) Order 2000, SI 2000/168) benefit from exemption only if they are resident outside the United Kingdom and not present in the United Kingdom when offered a post. Locally engaged staff recruited between 1 August 1988 (ie the date on which the previous, superseded amendment by the Immigration Act 1988 s 4 was brought into force: see the Immigration Act 1988 (Commencement No 1) Order 1988, SI 1988/1133) and 1 March 2000 were subject to immigration control but became exempt from control on their return if they travelled abroad before 1 March 2000, and their exemption continues. Locally engaged staff recruited prior to 1 August 1988 remain entitled to exemption under s 8(3) as originally enacted.

3 'Like immunity' is conferred on persons connected with numerous international organisations: see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 307 et seq.

4 Immigration Act 1971 s 8(3) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2). The exemption provided by the Immigration Act 1971 s 8(3) (as amended) does not equate precisely with the diplomatic immunity conferred by the Diplomatic Privileges Act 1964: see *Florentine v Secretary of State for the Home Department* [1987] Imm AR 1, IAT (person in permit-free domestic service at embassy not exempt and liable to deportation as overstayer). Service staff paid by the sending country are exempt, while those employed and paid by the head of mission require leave to enter as private servants in diplomatic households (ie in accordance with para 112 post): see the *Immigration Directorates' Instructions* Chapter 14 (Persons

Exempt from Control) Annex A (February 2001). Locally recruited staff are not now exempt: see note 2 supra. As to diplomatic privileges and immunity see further INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 265 et seq.

As to the circumstances in which and the time at which the exemption from control arises and expires see *R v Secretary of State for the Home Department, ex p Bagga* [1991] 1 QB 485, [1991] 1 All ER 777, [1990] Imm AR 413, CA (exemption begins on arrival in the United Kingdom and not on taking up the appointment or on its notification to the overseas government; the simple 'open' date-stamping of the passport of a person with exempt status does not per se lead to the grant of indefinite leave to remain after the exempt status expires).

Where a person having limited leave to enter or remain in the United Kingdom becomes entitled to an exemption under the Immigration Act 1971 s 8(3) (as amended), that leave continues to apply after that person ceases to be entitled to the exemption, unless it has by then expired: s 8(5). A person is not to be regarded for the purposes of the Immigration Act 1971 as having been settled in the United Kingdom (see para 86 note 2 ante) at any time when he was entitled under the former immigration laws to an exemption corresponding to that afforded by s 8(3) (as amended): see s 8(5) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 5); and see also Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 6.

As to the limited continuation of leave to enter and remain where an exempt person ceases to be exempt see para 92 post.

5 As to the Secretary of State see para 2 ante.

6 An order in respect of a class of persons must be made by statutory instrument and is subject to annulment in pursuance of a resolution of either House of Parliament: Immigration Act 1971 s 8(2) (as amended: see note 7 infra). The power to make an order includes power to revoke or vary it: s 32(1). As to the production and proof of such an order in legal proceedings under the Immigration Acts see the Immigration Act 1971 s 32(2), (3) (as amended); and para 86 note 15 ante. For the meaning of 'the Immigration Acts' see para 83 ante. Where an order under the Immigration Act 1971 s 8(2) (as amended) applies to persons specified in a schedule to the order, prima facie evidence of the provisions of that order, other than the schedule or any entry contained in the schedule, may be given in any legal proceedings or proceedings under the Immigration Acts by the production of a document bearing a certificate purporting to be signed by or on behalf of the Secretary of State and stating that the document is a true copy of those provisions and of the relevant entry: Immigration Act 1971 s 32(4) (amended by Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 54(1), (4)). As to the order that has been made see the Immigration (Exemption from Control) Order 1972, SI 1972/1613 (amended by SI 1975/617; SI 1977/693; SI 1982/1649; SI 1985/1089; SI 1997/2207); and see the text and notes 7-13 infra; and paras 90-91 post.

7 Immigration Act 1971 s 8(2) (amended by the British Nationality Act 1981 Sch 4 para 2). The exemption may be unconditional or subject to such conditions as may be imposed by or under the order: Immigration Act 1971 s 8(2) (as so amended). Such an order may, as regards any person or class of person to whom it applies, provide for that person or class to be in specified circumstances regarded (notwithstanding the order) as settled in the United Kingdom for the purposes of the British Nationality Act 1981 s 1(1) (see para 26 ante): Immigration Act 1971 s 8(5A) (added by the British Nationality Act 1981 s 39(4)). Where a person having limited leave to enter or remain in the United Kingdom becomes entitled to an exemption by virtue of an order under the Immigration Act 1981 s 8(2) (as amended), that leave continues to apply after that person ceases to be entitled to the exemption, unless it has by then expired: s 8(5). A person is not to be regarded for the purposes of the Immigration Act 1971 as having been settled in the United Kingdom (see para 86 note 2 ante) at any time when he was entitled under the former immigration laws to an exemption corresponding to that afforded by an order under s 8(2) (as amended): see s 8(5) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 5); and see also the Immigration Rules para 6. As to the limited continuation of leave to enter and remain where an exempt person ceases to be exempt see para 92 post. As to when a person is settled in the United Kingdom for the purposes of the British Nationality Act 1981 s 1(1) (as amended) see para 26 note 9 ante.

8 'Consular officer' means any person, including the head of a consular post (ie the person charged with the duty of acting in that capacity in respect of any consulate-general, consulate, vice-consulate or consular agency), entrusted in that capacity with the exercise of consular functions: see the Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 2(1). See also the Convention on Consular Relations (Vienna, 24 April 1963; TS 14 (1973); Cmd 5219) art 1, as set out in the Consular Relations Act 1968 Sch 1; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 30, 290 et seq. As to consular functions see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 292.

9 Ie any of the states specified by the Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 3(1)(a), Schedule (amended by SI 1977/693), being states with which consular conventions have been concluded. The Schedule specifies the following states: Austria; Belgium; Bulgaria; Denmark; France; the German Democratic Republic; Greece; the Federal Republic of Germany; Hungary; Italy; Japan; Mexico; Mongolia; Norway; Poland; Romania; Sweden; Spain; the Union of Soviet Socialist Republics; the United States of America; and Yugoslavia. It accordingly fails to reflect recent political changes. The following states, with which consular conventions have been concluded, have also been specified for these purposes: Armenia;

Azerbaijan; Belarus; Bosnia-Herzegovina; China; Croatia; Cuba; Czech Republic; Egypt; Georgia; Greece; Kazakhstan; Kyrgyzstan; Macedonia; Moldova; Netherlands; Russia; Slovak Republic; Slovenia; Tajikistan; Turkmenistan; Ukraine; Uzbekistan; and the former Federal State of Yugoslavia: see the *Immigration Directorates' Instructions* Chapter 14 (Persons Exempt from Control) Section 1 paragraph 2.2 (February 2001).

10 'Consular employee' means any person employed in the administrative or technical service of a consular post: see the Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 2(1). See also the Convention on Consular Relations art 1, as set out in the Consular Relations Act 1968 Sch 1; and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 30, 290 et seq. Any reference to a consular employee is to be construed as a reference to such an employee who is in the full-time service of the state concerned and is not engaged in the United Kingdom in any private occupation for gain: Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 3(2).

11 Ibid art 3(1) (amended by SI 1982/1649).

12 It states other than those mentioned in the Immigration (Exemption from Control) Order 1972, SI 1972/1613, Schedule (as amended) (see note 9 supra).

13 Ibid art 4(h), (i), (n) (art 4(n) substituted by the Immigration (Exemption from Control) (Amendment) (No 2) Order 1997, SI 1997/2207, art 3). As to deportation see para 160 et seq post.

UPDATE

88 Exemption from control: members of diplomatic missions

NOTE 6--SI 1972/1613 further amended: SI 2004/3171.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(ii) Exemption from Control/89. Exemption from control: service personnel and members of visiting forces.

89. Exemption from control: service personnel and members of visiting forces.

The statutory provisions relating to non-British citizens¹, other than those concerning deportation, do not apply to any person²: (1) who is subject, as a member of the home forces³, to service law⁴; or (2) who is a member of a Commonwealth force or of a force raised under the law of any colony undergoing or about to undergo training in the United Kingdom⁵ with the home forces⁶; or (3) who is serving or posted for service in the United Kingdom as a member of a visiting force⁷ or of any force raised under the law of any colony or as a member of a designated⁸ international headquarters or defence organisation⁹.

1 See paras 83-85 ante. As to British citizens see paras 8, 23-43 ante.

2 Where a person having limited leave to enter or remain in the United Kingdom becomes entitled to an exemption under the Immigration Act 1971 s 8(4) (as amended), that leave continues to apply after that person ceases to be entitled to the exemption, unless it has by then expired: s 8(5). A person is not to be regarded for the purposes of the Immigration Act 1971 as having been settled in the United Kingdom (see para 86 note 2 ante) at any time when he was entitled under the former immigration laws to an exemption corresponding to that afforded by an order under head (2) or head (3) in the text: see s 8(5) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 5); and Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 6. As to deportation see para 160 et seq post.

3 'The home forces' means any of Her Majesty's forces other than a Commonwealth force or a force raised under the law of any associated state or colony; and 'Commonwealth force' means a force of any country to which provisions of the Visiting Forces Act 1952 apply without an Order in Council under s 1 (as amended) of that Act: Immigration Act 1971 s 8(6). As to the countries to which the Visiting Forces Act 1952 applies without

an Order in Council under s 1 (as amended) see s 1(1)(a) (as amended); and ARMED FORCES. As to the Commonwealth and colonies see COMMONWEALTH vol 13 (2009) PARAS 701, 705.

4 Immigration Act 1971 s 8(4)(a) (s 8(4) (amended by the British Nationality Act 1981 Sch 4). See note 2 supra. See also *R v Secretary of State for the Home Department, ex p Man Keng Wuan* [1989] Imm AR 501 (member of British army in Hong Kong). As to service law see ARMED FORCES.

5 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

6 Immigration Act 1971 s 8(4)(b) (s 8(4) as amended (see note 4 supra); and s 8(4)(b) amended by the Statute Law (Repeals) Act 1995). See note 2 supra.

7 'Visiting force' means a body, contingent or detachment of the forces of a country to which any of the provisions of the Visiting Forces Act 1952 apply, being a body, contingent or detachment for the time being present in the United Kingdom on the invitation of the government of the United Kingdom: Immigration Act 1971 s 8(6). As to the countries to which the Visiting Forces Act 1952 applies see s 1 (as amended) and the Orders in Council made thereunder; and ARMED FORCES.

8 le designated by an Order in Council made under the International Headquarters and Defence Organisations Act 1964 s 1 (see ARMED FORCES).

9 Immigration Act 1971 s 8(4)(c). See note 2 supra.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(ii) Exemption from Control/90. Exemption from control: government representatives and staff of international organisations.

90. Exemption from control: government representatives and staff of international organisations.

In pursuance of his power to exempt¹ any person or class of persons from all or any of the statutory provisions relating to non-British citizens², the Secretary of State³ has ordered that visiting members of foreign governments⁴, officials of the International Monetary Fund, the International Bank for Reconstruction and Development, the International Finance Corporation, and the International Development Association⁵, visiting representatives of certain Commonwealth countries and their staff⁶, persons connected with the service of the government of Commonwealth countries or the Republic of Ireland enjoying immunity from jurisdiction⁷, persons connected with certain international organisations and international tribunals and representatives of foreign countries and their staffs attending conferences in the United Kingdom⁸, officers or servants of the Commonwealth Secretariat⁹, representatives and officers of the North Atlantic Salmon Conservation Organisation¹⁰, members of the Hong Kong Economic and Trade Office¹¹, members of the Decommissioning Commission for Northern Ireland¹², and any member of any such person's family forming part of his household¹³, are exempt from any provision of the Immigration Act 1971 relating to persons who are not British citizens, except any such provision relating to deportation¹⁴.

1 le under the Immigration Act 1971 s 8(2) (as amended): see para 88 ante. Where a person having limited leave to enter or remain in the United Kingdom becomes entitled to an exemption by virtue of an order under s 8(2) (as amended), that leave continues to apply after that person ceases to be entitled to the exemption, unless it has by then expired: s 8(5). A person is not to be regarded for the purposes of the Immigration Act 1971 as having been settled in the United Kingdom (see para 86 note 2 ante) at any time when he was entitled under the former immigration laws to an exemption corresponding to that afforded by an order under s 8(2) (as amended): see s 8(5) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 5); and Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 6.

As to the limited continuation of leave to enter and remain where an exempt person ceases to be exempt see para 92 post.

2 See paras 83-85 ante. As to British citizens see paras 8, 23-43 ante.

3 As to the Secretary of State see para 2 ante.

4 I.e., unless the Secretary of State otherwise directs, any member of the government of a country or territory outside the United Kingdom and Islands who is visiting the United Kingdom on the business of that government: Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 4(a). As to the meaning of 'United Kingdom' see para 5 note 1 ante. For the meaning of 'United Kingdom and Islands' see para 83 note 12 ante.

5 I.e. any person entitled to immunity from legal process with respect to acts performed by him in his official capacity under any Order in Council made under the Bretton Woods Agreements Act 1945 s 3(1), the International Finance Corporation Act 1955 s 3(1), and the International Development Association Act 1960 s 3(1) (which respectively empower Her Majesty by Order in Council to make provision relating to the immunities and privileges of the governors, executive directors, alternates, officers and employees of the International Monetary Fund and the International Bank for Reconstruction and Development, the governors, directors, alternates, officers and employees of the International Finance Corporation, and the governors, directors, alternates, officers and employees of the International Development Association): see the Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 4(b)-(d). As to the International Monetary Fund, the International Bank for Reconstruction and Development, the International Finance Corporation and the International Development Association (jointly known as the World Bank) see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 1391-1392.

6 The Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 4(e) refers to any person (not being a person to whom the Immigration Act 1971 s 8(3) (as amended) (see para 88 ante) applies) who is the representative or a member of the official staff of the representative of the government of a country to which the Diplomatic Immunities (Conferences with Commonwealth Countries and Republic of Ireland) Act 1961 s 1 applies, so long as he is included in a list compiled and published in accordance with s 1. However, s 1 (which provided for representatives of certain Commonwealth countries and their staff attending conferences in the United Kingdom to be entitled to diplomatic immunity) has been repealed. As to diplomatic immunity see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 265 et seq.

7 I.e. any person on whom any immunity from jurisdiction is conferred by any Order in Council made under the Consular Relations Act 1968 s 12(1) (as substituted) (which empowers Her Majesty by Order in Council to confer on certain persons connected with the service of the government of Commonwealth countries or the Republic of Ireland all or any of the immunities and privileges which are conferred by or may be conferred under that Act on persons connected with consular posts): see the Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 4(f). As to Orders in Council made under the Consular Relations Act 1968 s 12(1) (as substituted) see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 302.

8 I.e. any person (not being a person to whom the Immigration Act 1971 s 8(3) (as amended) (see para 88 ante) applies) on whom any immunity from suit and legal process is conferred by any Order in Council made under the International Organisations Act 1968 s 1(2), s 5(1) or s 6(2) (as amended) (which empower Her Majesty by Order in Council to confer certain immunities and privileges on persons connected with certain international organisations and international tribunals and on representatives of foreign countries and their staffs attending certain conferences in the United Kingdom), except any such person as is mentioned in s 5(2) (c)-(e) or by any Order in Council continuing to have effect by virtue of s 12(5): see the Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 4(g). Employees and representatives of the following organisations, and family members forming part of their households, benefit from this provision: the African Development Fund, the Asian Development Bank, the Caribbean Development Bank, the Central Treaty Organisation, the Commission of the European Communities, the Commonwealth Agricultural Bureau International, the Commonwealth Secretariat, the Commonwealth Telecommunications Bureau, the Council of Europe, Eurocontrol (the European Organisation for the Safety of Air Navigation), the European Atomic Energy Community, the European Bank for Reconstruction and Development, the European Bioinformatics Institute, the European Centre for Medium Range Weather Forecasts, the European Coal, Iron and Steel Community, the European Commission on Human Rights, the European Court of Human Rights, the European Investment Bank, the European Parliament, the European Patent Organisation, the European Space Agency, the Inter-American Development Bank, the Inter-Governmental Maritime Consultative Organisation, the International Atomic Energy Agency, the International Centre for Settlement of Investment Disputes, the International Civil Aviation Organisation, the International Cocoa Organisation, the International Coffee Organisation, the International Court of Justice, the International Fund for Agricultural Development, the International Labour Organisation, the International Lead and Zinc Study Group, the International Maritime Satellite Organisation, the International Oil Pollution Compensation Fund, the International Rubber Study Group, the International Sugar Council, the International Telecommunication Union, the International Tin Council, the International Whaling Commission, the International Wheat Council, the Joint European Torus, the North Atlantic Treaty Organisation, the Organisation for Economic Co-operation and Development, the Oslo and Paris Commission, the South East Asia Treaty Organisation, the United Nations, the United Nations Education, Scientific and Cultural Organisation, the Universal Postal Union, the Western European Union, the World Health Organisation, the World Intellectual Property Organisation, and the World Meteorological Organisation: see the *Immigration Directorates*

Instructions Chapter 14 (Persons Exempt from Control) Annex B paragraph 5 (December 2000). As to the privileges and immunities of international organisations see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 309.

9 le any officer or servant of the Commonwealth Secretariat falling within the Commonwealth Secretariat Act 1966 Schedule para 6 (which confers certain immunities on those members of the staff of the Secretariat who are not entitled to full diplomatic immunity: see COMMONWEALTH vol 13 (2009) PARA 723): see the Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 4(j) (substituted by SI 1977/693).

10 le any person to whom any immunity from suit and legal process is conferred by the European Communities (Immunities and Privileges of the North Atlantic Salmon Conservation Organisation) Order 1985, SI 1985/1773 (as amended) (which confers certain immunities and privileges on the representatives and officers of the North Atlantic Salmon Conservation Organisation): see the Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 4(k) (added by SI 1977/693; and substituted by SI 1985/1809).

11 Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 4(l) (added by SI 1985/1809; and substituted by SI 1997/1402). As to the Hong Kong Economic and Trade Office see the Hong Kong Economic and Trade Office Act 1996 Schedule para 8.

12 le any member or servant of the Independent International Commission on Decommissioning established under an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland concluded on 26 August 1997: see the Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 4(m)(i) (art 4(m) substituted by SI 1997/2207). For these purposes, 'servant' includes any agent of the Commission or any person carrying out work for or giving advice to it: Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 4(m)(ii) (as so substituted). As to the Decommissioning Commission see the Northern Ireland Arms Decommissioning Act 1997; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

13 See the Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 4(n) (substituted by SI 1997/2207).

14 Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 4. As to deportation see para 160 et seq post.

UPDATE

90 Exemption from control: government representatives and staff of international organisations

TEXT AND NOTES--Certain persons engaged on or with respect to the business of the International Criminal Court (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 437 et seq) are also to be so exempt from control: SI 1972/1613 arts 4(o), 4A (both added by SI 2004/3171).

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/3. Immigration/(1) Control of Admission to the United Kingdom/(ii) Exemption from Control/91. Exemption from control: specified non-British citizens.

91. Exemption from control: specified non-British citizens.

In pursuance of his power to exempt¹ any person or class of persons from all or any of the statutory provisions relating to non-British citizens², the Secretary of State³ has ordered that:

- 132 (1) any British overseas territories citizen or British overseas citizen⁴ who holds a passport issued to him in the United Kingdom and Islands⁵ and expressed to be a British Visitor's Passport⁶;
- 133 (2) any Commonwealth citizen⁷ who is included in a passport issued in the United Kingdom by the government of the United Kingdom or in one of the Islands⁸ by the Lieutenant-Governor thereof which is expressed to be a collective passport⁹;

- 134 (3) any Commonwealth citizen or citizen of the Republic of Ireland returning to the United Kingdom from an excursion to France, Belgium or the Netherlands who holds a valid document of identity issued in accordance with arrangements approved by the United Kingdom government and in a form authorised by the Secretary of State and enabling him to travel on such an excursion without a passport¹⁰;
- 135 (4) any Commonwealth citizen who holds a British seaman's card¹¹ or any citizen of the Republic of Ireland if (in either case) he was engaged as a member of the crew of a ship¹² in a place within the common travel area¹³ and, on arrival in the United Kingdom, is, or is to be, discharged from his engagement¹⁴; and
- 136 (5) any person who, having left the United Kingdom after having been given a limited leave to enter, returns within the period for which he had leave as a member of the crew of an aircraft under an engagement requiring him to leave on that or another aircraft as a member of its crew within a period exceeding seven days¹⁵,

is exempt from the provisions of the Immigration Act 1971 requiring non-British citizens to obtain leave to enter the United Kingdom¹⁶.

1 le under the Immigration Act 1971 s 8(2): see para 88 ante. Where a person having limited leave to enter or remain in the United Kingdom becomes entitled to an exemption by virtue of an order under s 8(2) (as amended), that leave continues to apply after that person ceases to be entitled to the exemption, unless it has by then expired: s 8(5). A person is not to be regarded for the purposes of the Immigration Act 1971 as having been settled in the United Kingdom (see para 86 note 2 ante) at any time when he was entitled under the former immigration laws to an exemption corresponding to that afforded by an order under s 8(2) (as amended): see s 8(5) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 5); and Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 6.

As to the limited continuation of leave to enter and remain where an exempt person ceases to be exempt see para 92 post.

2 See paras 83-85 ante. As to British citizens see paras 8, 23-43 ante.

3 As to the Secretary of State see para 2 ante.

4 The Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 5(1) (as amended) refers to 'any citizen of the United Kingdom and colonies', a status of citizenship which has been abolished (see para 8 ante), and should be read as referring to the categories of citizenship mentioned in the text. As to British overseas territories citizenship see paras 8, 44-57 ante. As to British overseas citizens see paras 8, 58-62 ante. As to the continuing relevance of citizenship of the United Kingdom and colonies for certain purposes see paras 16-21 ante.

5 As to the meaning of 'United Kingdom' see para 5 note 1 ante. For the meaning of 'United Kingdom and Islands' see para 83 note 12 ante.

6 Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 5(1)(a). British Visitor's Passports (which were non-renewable travel documents with 12 months' validity) have been abolished, and no such passport can still be valid.

7 For the purposes of the Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 5 (as amended), any reference to a Commonwealth citizen is to be construed as including a reference to a British protected person: art 5(3). As to Commonwealth citizens see para 11 ante. As to British protected persons see paras 10, 72-76 ante.

8 For the meaning of 'the Islands' see para 83 note 12 ante.

9 Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 5(1)(b).

10 Ibid art 5(1)(c) (amended by SI 1975/617).

11 'British seaman's card' means a valid card issued under any regulations in force under the Merchant Shipping Act 1995 s 79 or any card having effect by virtue of such regulations as a card so issued (see SHIPPING

AND MARITIME LAW vol 93 (2008) PARA 544 et seq); and 'holder of a British seaman's card' has the same meaning as in those regulations (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 545): Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 5(3).

12 As to the meaning of 'ship' see para 87 note 2 ante.

13 As to the common travel area see para 94 post.

14 Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 5(1)(d). The provisions of art 5(1)(d), (e) (see the text and note 15 infra) do not apply to a person who is required by an immigration officer to submit to examination in accordance with the Immigration Act 1971 Sch 2 (as amended): Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 5(2). As to the power of an immigration officer to require submission to examination para 143 et seq post.

15 Ibid art 5(1)(e). See note 14 supra.

16 Ibid art 5(1) (amended by SI 1982/1649). No exemption is, however, thereby conferred on any person against whom there is a deportation order in force or who has previously entered the United Kingdom unlawfully and has not subsequently been given leave to enter or remain in the United Kingdom: Immigration (Exemption from Control) Order 1972, SI 1972/1613, art 5(2).

UPDATE

91 Exemption from control: specified non-British citizens

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(ii) Exemption from Control/92. Duration of leave to enter and remain where exempt person ceases to be exempt.

92. Duration of leave to enter and remain where exempt person ceases to be exempt.

A person who, having been exempt from immigration control¹ by virtue of being a member of a diplomatic mission² or a person or class of persons exempted by order of the Secretary of State³, ceases to be exempt and as a result requires leave to enter or remain in the United Kingdom⁴ must be treated as if he had been given leave to remain in the United Kingdom for a period of 90 days beginning with the day on which he ceased to be exempt⁵, unless there is in force in respect of him leave to enter or remain which expires before the end of the 90 day period, in which case his leave is treated as expiring at the end of the shorter period⁶.

1 Ie the provisions of the Immigration Act 1971.

2 See ibid s 8(3) (as amended); and para 88 ante.

3 See ibid s 8(2) (as amended); and paras 88, 90-91 ante. As to the Secretary of State see para 2 ante.

4 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

5 Immigration Act 1971 s 8A(1), (2) (s 8A added by the Immigration and Asylum Act 1999 s 7).

6 Immigration Act 1971 s 8A(3) (as added: see note 5 supra).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/A. GENERAL REQUIREMENTS/93. Requirements for admission to the United Kingdom.

(iii) Requirements for Admission

A. GENERAL REQUIREMENTS

93. Requirements for admission to the United Kingdom.

On arrival in the United Kingdom¹, a person must produce, at the request of the immigration officer², a valid national passport (with photograph) or other document satisfactorily establishing his identity and nationality or citizenship³. Every person arriving in the United Kingdom⁴ is liable to be examined⁵ and must furnish the immigration officer with all such information in his possession as the officer may require for the purpose of deciding: (1) whether that person is or is not a British citizen⁶; (2) if not, whether he may enter the United Kingdom without leave⁷; and (3) if he may not, whether he has been given leave which is still in force, should be given leave and for what period or on what conditions (if any), or should be refused leave⁸. A person who arrives in the United Kingdom with leave to enter which is in force and was given to him before his arrival or who seeks to arrive in the United Kingdom with such leave and is in a control zone in France or Belgium or a supplementary control zone in France is liable to be examined⁹ and must furnish the immigration officer with all such information in his possession as the officer may require to establish: (a) whether leave should be cancelled because of a change in circumstances since the leave was given¹⁰, on medical grounds¹¹, or because cancellation would be conducive to the public good¹²; or (b) whether the leave was obtained by the giving of false information or the failure to disclose material facts¹³. A sponsor of a person seeking entry may be requested to give a written undertaking to be responsible for that person's maintenance and accommodation for the period for which leave is granted, including any variation¹⁴.

A British citizen does not require leave to enter, since he has the right of abode¹⁵. However, a British citizen must prove that he has the right of abode by producing either a United Kingdom passport¹⁶ describing him as a British citizen, a British overseas territories citizen¹⁷ or a British overseas citizen¹⁸ having the right of abode in the United Kingdom, or a certificate of entitlement duly issued by or on behalf of the government certifying that he has such a right of abode¹⁹. A Commonwealth citizen who is not a British citizen but has the right of abode does not require leave to enter, although he must prove such a right by means of a certificate of entitlement duly issued by or on behalf of the government. Any person other than a British citizen or a Commonwealth citizen having the right of abode, or a person exercising enforceable Community rights, requires leave to enter²⁰. A person who is a British overseas territories citizen, a British national (overseas)²¹, a British overseas citizen, a British protected person²², or a British subject by virtue of having been immediately prior to 1 January 1983²³ a British subject without citizenship²⁴, who produces a United Kingdom passport issued in either the United Kingdom and Islands²⁵ or the Irish Republic prior to 1 January 1973²⁶, must be freely admitted unless the passport has been endorsed to show that he was subject to immigration control²⁷. If a British overseas citizen holds a United Kingdom passport, wherever issued, and satisfies the immigration officer that he has, since 1 March 1968, been given indefinite leave to remain, he must be given indefinite leave to enter²⁸.

A person who produces: (i) a national passport or travel document issued by a territorial entity or authority which is not recognised by Her Majesty's government as a state or is not dealt with

as a government by it, or which does not accept valid United Kingdom passports for the purpose of its own immigration control; or (ii) a passport or travel document which does not comply with international passport practice, may be refused leave to enter on that ground alone²⁹.

Where leave to enter is given, it is usually for a limited period. If the person's permission to enter another country has to be exercised before a given date, his leave to enter or remain in the United Kingdom may be restricted so as to terminate at least two months before that date³⁰. If his passport or travel document is endorsed with a restriction on the period for which he may remain outside his country of normal residence, his leave to enter or remain may be limited so as not to extend beyond the period of his authorised absence³¹. The holder of a travel document issued by the Home Office must not be given leave to enter for a period extending beyond the validity of that document³². The person concerned will be informed of the time limit and any conditions attached³³, by a notice which may be: (A) handed to him; or (B) endorsed in his passport³⁴ or travel document; or (C) given by facsimile or electronic mail; or (D) in the case of a visitor, given orally (including by telecommunications); or (E) given to a responsible third party³⁵. Where a person has leave to enter given before his arrival³⁶, or an entry clearance which has effect as leave to enter³⁷, no further notice or endorsement is given on entry. After admission an application for extension of the time limit or variation of the conditions should be made to the Home Office, but may be made at a port of entry on re-entry during the period of current leave³⁸.

Where a person at a port or airport in the United Kingdom applies for asylum, the application is referred by the immigration officer for determination by the Secretary of State³⁹.

Immigration officers are required to carry out their duties without regard to the race, colour or religion of those seeking entry and in compliance with the provisions of the Human Rights Act 1998⁴⁰.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante. A person arriving in the United Kingdom on a ship or aircraft is deemed not to enter the United Kingdom unless and until he disembarks, and on disembarkation at a port he is deemed not to enter the United Kingdom so long as he remains in such area (if any) at the port as may be approved for the purposes by an immigration officer: Immigration Act 1971 s 11(1). As to the meaning of 'ship' see para 87 note 2 ante. As to the meaning of 'aircraft' see para 87 note 3 ante. 'Disembark' means disembark from a ship or aircraft, and 'embark' means embark in a ship or aircraft: s 11(2). References to arrival by ship extend to arrival by any floating structure and 'disembark' is to be construed accordingly, although the provisions relating to the crew of a ship (see para 87 ante) do not thereby apply in relation to any floating structure not being a ship: s 11(3). References to disembarking or embarking in the United Kingdom do not apply to disembarking after, or embarking for, a local journey from or to a place in the United Kingdom or elsewhere in the common travel area: s 11(2). As to the common travel area see para 94 post. Her Majesty may by Order in Council direct that any of the provisions of the Immigration Act 1971 are to have effect in relation to persons entering or seeking to enter the United Kingdom on arrival otherwise than by ship or aircraft as they have effect in the case of a person arriving by ship or aircraft: s 10(1). Any such order may make such adaptations or modifications of those provisions, and such supplementary provisions, as appear to Her Majesty to be necessary or expedient for the purposes of the order: see s 10(1), (1B) (s 10(1B) prospectively added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 47(1)). As from a day to be appointed, the provisions of the Immigration Act 1971 s 10(1) are repealed and replaced by the corresponding provisions of s 10(1B) (see the Immigration and Asylum Act 1999 s 169(1), (3), Sch 14 paras 43, 47(1), (2), Sch 16) but at the date at which this volume states the law no such day had been appointed. An order may include provision for excluding the Republic of Ireland from the Immigration Act 1971 s 1(3) (see para 94 post) either generally or for any specified purposes: s 10(2) (prospectively amended: see infra). As from a day to be appointed, s 10(2) is amended (but not so as to substantially affect the meaning) by the Immigration and Asylum Act 1999 Sch 14 paras 43, 47(1), (4). At the date at which this volume states the law no such day had been appointed. As to the order that has been made under the Immigration Act 1971 s 10(1) see the Immigration (Entry Otherwise than by Sea or Air) Order 2002, SI 2002/1832; and para 152 post. No recommendation may be made to Her Majesty to make an order under the Immigration Act 1971 s 10 (as amended) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament: s 10(3).

A person arriving in the United Kingdom through the tunnel system is deemed not to enter the United Kingdom unless and until: (1) he leaves any control area designated under Sch 2 para 26 (as amended) (see para 145 post); or (2) he remains on a through train after it has ceased to be such a control area: s 11(1) (modified for

the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(5)(a); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). For the meaning of 'tunnel system' see para 196 note 3 post.

Members of the crew of a ship, aircraft, through train or shuttle train and members of other special categories who enter lawfully by virtue of the Immigration Act 1971 s 8(1) (where necessary as applied with appropriate modifications) but seek to remain beyond the time limited thereby, are treated as if they were seeking leave to enter: see s 11(5); and para 87 ante.

A person is deemed not to have entered the United Kingdom so long as he is detained or temporarily admitted or released while liable to detention under the powers conferred on immigration officers under the Immigration Act 1971 Sch 2 (see paras 212-218 post): Immigration Act 1971 s 11(1). As from a day to be appointed s 11(1) is amended so as to refer to powers conferred under the Immigration and Asylum Act 1999 Pt III (ss 44-55) (not yet in force) (see paras 219-224 post): Immigration Act 1971 s 11(1) (prospectively amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 48). At the date at which this volume states the law no such day had been appointed.

Temporary admission is not leave to enter and a person who absconds after the grant of temporary admission becomes an illegal entrant: see para 151 post. As to temporary admission see para 212 post.

As to the duty of carriers to supply passenger information, and their liability for clandestine immigrants and for persons without proper documentation, see paras 147, 203 post.

2 An immigration officer must act fairly: *Re HK (an infant)* [1967] 2 QB 617, [1967] 1 All ER 226, DC. As to the meaning of 'immigration officer' see para 86 note 12 ante.

3 Immigration Act 1971 Sch 2 para 4(2)(a) (amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 58); Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 11(i). As to passports see para 78 ante. Failure to produce the appropriate document is grounds for refusal of entry clearance or leave to enter: see the Immigration Rules para 320(3); and para 136 post. The grant or refusal of a British passport is governed by the royal prerogative but is reviewable: *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Everett* [1989] QB 811, [1989] 1 All ER 655, [1989] Imm AR 155, CA. The Secretary of State must exercise his discretion in the matter reasonably: *R v Secretary of State for the Home Department, ex p Fayed* [1997] 1 All ER 228, [1998] 1 WLR 763, CA. As to the royal prerogative see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 367 et seq; CROWN AND ROYAL FAMILY vol 12(1) (Reissue) para 46 et seq.

An EEA national need produce only a valid national identity card or passport issued by an EEA state; and a family member of an EEA national who is not himself an EEA national need only produce a valid national identity card issued by an EEA state or a valid passport, and either a valid EEA family permit or residence document (where the family member is a visa national (ie a person who is required to produce a passport or other identity document endorsed with a United Kingdom visa: see para 96 post) or a person who seeks to be admitted to install himself with a qualified person) or a document proving that he is a family member of a qualified person (in all other cases, but only where required by an immigration officer): Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 12 (modified by SI 2002/1241). For the meanings of 'EEA national' and 'EEA state' see para 227 post.

4 This includes persons seeking to arrive in the United Kingdom through the tunnel system and transit passengers, crew members and others not seeking to enter the United Kingdom at all: Immigration Act 1971 Sch 2 para 2(1) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(c); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). For the meanings of 'crew' and 'member of the crew' see para 87 note 1 ante.

5 In relation to persons seeking to arrive in the United Kingdom through the tunnel system, the power conferred by the Immigration Act 1971 Sch 2 para 2(1) (as modified) (see note 4 supra) is exercisable either in a control area (as respects persons who have arrived in the United Kingdom) or in a control zone in France or Belgium or a supplementary control zone in France (as respects persons seeking to arrive in the United Kingdom, who may first be questioned to ascertain whether they are seeking to do so): Sch 2 para 2(1A) (added for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(d); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). 'Control zone' means (in relation to France) the part of the territory of the host state determined by mutual agreement between the two governments within which the officers of the adjoining state are empowered to effect controls (Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 2(3), Sch 1, Sch 2 art 1(2)(g)); or (in relation to Belgium) that part of the territory of the host state and the non-stop trains (ie the international trains travelling between Belgian and British territory, using the Fixed Link and crossing French territory without making a commercial stop, except for technical stops) within which the officers of the other states are empowered to effect controls (providing that each control zone is defined by mutual agreement between the host state and the state whose officers will be

operating in the said zone, except that in the case of non-stop trains, the control zone in French territory is determined jointly by the three governments) (Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 2(1), (3), Sch 1, Sch 2 art 1(4), (6)). 'Host state' means the state in whose territory the controls of the other state are effected (Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 2(3), Sch 2 art 1(2)(b); Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 2(1), (3), Sch 1, Sch 2 Pt I art 1(4), (6)); and 'adjoining state' means the other state (Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 2(3), Sch 2 art 1(2)(c)). 'Fixed link' means the Channel Fixed Link defined in the Treaty Done at Canterbury on 12 February 1986 art 1: Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 2(1), (3), Sch 1, Sch 2 Pt I art 1(2). 'Supplementary control zone' means the part of the territory of the state of departure, determined by mutual agreement between the governments of the state of departure and the state of arrival, within which the officers of the state of arrival are empowered to effect controls under the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 2A (as added): art 2(1), Sch 1. 'State of departure' means the state in which the persons board the train; 'state of arrival' means the state in which the persons alight from the train: art 2(1), (4), Sch 1, Sch 2A art 1 (added by SI 2001/1544).

6 Immigration Act 1971 Sch 2 paras 2(1)(a), 4(1) (Sch 2 para 2(1)(a) amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2). As to British citizens and citizenship see paras 8, 23-43 ante.

7 Immigration Act 1971 Sch 2 paras 2(1)(b), 4(1).

8 Ibid Sch 2 paras 2(1)(c), 4(1) (Sch 2 para 2(1)(c) substituted by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 56).

9 Immigration Act 1971 Sch 2 para 2A(1), (1A), (2) (Sch 2 para 2A added by the Immigration and Asylum Act 1999 Sch 14 paras 43, 57; and the Immigration Act 1971 Sch 2 para 2A(1A) added for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(ea) (itself added by SI 2000/1775); and by the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7).

10 Immigration Act 1971 Sch 2 paras 2A(2)(a), 4(1) (Sch 2 para 2A as added (see note 9 supra); Sch 2 para 4(1) amended by the Immigration and Asylum Act 1999 Sch 14 paras 43, 58).

11 Immigration Act 1971 Sch 2 para 2A(2)(c) (as added: see note 9 supra), Sch 2 para 4(1) (as amended: see note 10 supra).

12 Ibid Sch 2 para 2A(3) (as added: see note 9 supra), Sch 2 para 4(1) (as amended: see note 10 supra).

13 Ibid Sch 2 para 2A(2)(b) (as added: see note 9 supra), Sch 2 para 4(1) (as amended: see note 10 supra).

14 See the Immigration Rules para 35 (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 8), which also provides that the sponsor may be liable to reimburse the Department of Social Security for any income support paid to meet the sponsored person's needs and that failure by the sponsor to maintain the sponsored person in accordance with the undertaking may also be an offence under the Social Security Administration Act 1992 s 105 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 397) and the Immigration and Asylum Act 1999 s 108 (see para 254 post). As to maintenance and support requirements see para 121 post.

15 See para 84 ante. As to the right of abode see para 85 ante.

16 'United Kingdom passport' means a current passport issued by the government of the United Kingdom, or by the Lieutenant-Governor of any of the Islands, or by the government of any territory which is for the time being a British overseas territory: see the Immigration Act 1971 s 33(1) (definition added by the British Nationality Act 1981 s 39(6), Sch 4 para 7; and amended by the British Overseas Territories Act 2002 s 1(2)); the Immigration and Asylum Act 1999 s 167(2); and the Immigration Rules para 6. The passport must be current: *Akewushola v Secretary of State for the Home Department* [2000] 2 All ER 148, [2000] 1 WLR 2295, [1999] Imm AR 594, CA. For the meaning of 'the Islands' see para 83 note 12 ante. As to the British overseas territories see para 44 ante. As to passports see further para 78 ante.

17 As to British overseas territories citizens and citizenship see paras 8, 44-57 ante.

18 As to British overseas citizens see paras 8, 58-62 ante.

19 As to certificates of entitlement see para 85 note 13 ante.

20 See the Immigration Act 1971 s 3(1) (as amended); the Immigration Act 1988 s 7(1); and para 86 ante. Any person who is not entitled to enter by virtue of the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 12 (as modified) (see the text and note 3 supra) or EC Commission Regulation 1251/70

(see para 183 post) requires leave to enter: see the Immigration Rules para 7 (substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 5). Other persons not requiring leave to enter under the Immigration Act 1971 are persons arriving from Ireland or another part of the common travel area in circumstances where leave to enter is not required (see s 9; the Immigration (Control of Entry through Republic of Ireland) Order 1972, SI 1972/1610; and para 94 post), and persons exempt from control, including diplomats, crew members, service personnel, members of visiting forces, government representatives and the staff of international organisations (see the Immigration Act 1971 s 8 (as amended); and paras 87-90 ante). The Secretary of State may by order made by statutory instrument give leave to enter the United Kingdom for a limited period to any class of persons who are nationals of member states but who are not entitled to enter the United Kingdom as mentioned in the Immigration Act 1988 s 7(1): s 7(2). Any such order may give leave subject to such conditions as may be imposed by the order: s 7(2). At the date at which this volume states the law no such order had been made. Conditions of leave may restrict employment or occupation in the United Kingdom, require the person to maintain and accommodate himself and his dependants without recourse to public funds, or require the person to register with the police: see the Immigration Rules para 8 (substituted by Statement of Changes in Immigration Rules (Cm 3365) (1996) para 3). As to registration with the police see para 97 post. As to the Secretary of State see para 2 ante.

References in the Immigration Act 1971 to limited leave include references to leave given by an order under the Immigration Act 1988 s 7(2); and a person having leave by virtue of such an order is treated as having been given that leave by a notice given to him by an immigration officer within the period specified in the Immigration Act 1971 Sch 2 para 6(1) (as amended) (see para 148 post): Immigration Act 1988 s 7(3).

21 As to British national (overseas) status see paras 8, 63-65 ante.

22 As to British protected persons see paras 10, 72-76 ante.

23 Ie the date on which the relevant provisions of the British Nationality Act 1981 were brought into force: see para 5 note 1 ante.

24 Ie by virtue of *ibid* s 30(a): see para 68 ante.

25 For the meaning of 'United Kingdom and Islands' see para 83 note 12 ante.

26 Ie the date on which the Immigration (Control of Entry through Republic of Ireland) Order 1972, SI 1972/1610 was brought into force: see para 94 post.

27 See the Immigration Rules para 16.

28 See the Immigration Rules para 17. See also *R v Secretary of State for the Home Department, ex p Himalyaishwar* (1984) Times, 21 February. As to the rules relating to returning residents generally see para 135 post.

29 See the Immigration Rules para 320(10). At the date at which this volume states the law the entities not recognised by the United Kingdom government were the Turkish Republic of Northern Cyprus, the Republic of China (Taiwan) and Palestine. Home Office policy is to admit passport-holders from these territories: see the *Immigration Directorates' Instructions* Chapter 9 (General Grounds for the Refusal of Entry Clearance, Leave to Enter or Variation of Leave to Enter or Remain) Section 2 paragraphs 12.1-12.4 (December 2000).

30 See the Immigration Rules para 21. The Immigration Rules paras 21-23 do not apply to a person who is eligible for admission for settlement or for removal of the time limit on his stay, or to a spouse eligible for admission to join a person present and settled or being admitted for settlement in the United Kingdom: see the Immigration Rules para 23.

31 See the Immigration Rules para 22. See note 30 *supra*.

32 See the Immigration Rules para 23. See note 30 *supra*. As to the Home Office see para 1 ante.

33 Eg a condition restricting employment, precluding recourse to public funds, or requiring registration with the police. As to registration with the police see para 97 post.

34 Where notice is given by a stamp in the passport which is illegible, no effective notice is given, and the person is deemed to have six months' leave to enter: *R v Secretary of State for the Home Department, ex p Tolba* [1988] Imm AR 78, QBD; *Minton v Secretary of State for the Home Department* [1990] Imm AR 199, CA.

35 See the Immigration Act 1971 ss 3, 4 (as amended); the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, arts 8, 9; Immigration Rules paras 8, 9 (Immigration Rules para 9 substituted by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 1). An immigration officer may also require a person who is given limited leave to enter to report to the appropriate medical officer of environmental health: see the Immigration Rules para 8 (substituted by Statement of Changes in Immigration

Rules (Cm 3365) (1996) para 3). It is an offence knowingly to remain beyond the time limit or to fail to comply with a condition or requirement under the Immigration Act 1971 ss 3, 4 (as amended): see s 24 (as amended); and para 197 et seq post. For the purposes of the Immigration Rules, 'employment', unless the contrary intention appears, includes paid and unpaid employment, self-employment and engaging in business or any professional activity: Immigration Rules para 6. For the meaning of 'public funds' see para 99 note 8 post.

36 Ie by virtue of the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 7. See also the Immigration Rules para 17A (added by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 5), which provides that an immigration officer may give or refuse leave to enter to a person wishing to travel to the United Kingdom whether or not that officer is himself in the United Kingdom, although an officer is not obliged to consider an application for leave to enter from a person outside the United Kingdom.

37 Ie by virtue of the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, arts 2, 3: see para 96 post.

38 See the Immigration Rules para 31A (added by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 10). In general, all applications for variation of leave to enter or remain must be made in the prescribed form and must be accompanied by the specified documents and photographs; and an application for such a variation made in any other way is invalid: see the Immigration Rules para 32 (amended by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 329) para 2). See also the Immigration Act 1971 s 31A (added by the Immigration and Asylum Act 1999 s 165). The exceptions are applications at the port of entry (in accordance with the Immigration Rules para 31A (as added)) (see para 137 post), applications in respect of employments for which a work permit is required (in accordance with the Immigration Rules para 33) (see para 137 post), applications made outside the United Kingdom (in accordance with the Immigration Rules para 33A (as added)) (see para 137 post), applications made by or in respect of EEA nationals (ie under the Immigration Rules paras 255, 257 (as substituted and amended)) (see para 137 post), and asylum applications (ie under the Immigration Rules Pt 11 (paras 327-352) (as amended)) (see para 238 et seq post): see the Immigration Rules para 32 (amended by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 329) para 2; and Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 11). An immigration officer acting on behalf of the Secretary of State may vary the leave at the port of entry but is not obliged to consider an application for variation made at the port. If the immigration officer declines to consider it but does not cancel leave under the Immigration Act 1971 Sch 2 para 2A(8) (as added) (see para 143 post), the person seeking variation should apply to the Home Office: see the Immigration Rules para 31A (as so added). As to variation see also para 137 post.

39 See the Immigration Rules para 328; and para 238 post. As to the Secretary of State see para 2 ante. As to claims for asylum see para 238 et seq post.

40 See the Immigration Rules para 2 (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 1(b)). See also note 2 supra. However, discrimination on grounds of nationality, ethnic or national origins is not unlawful in carrying out immigration and nationality functions, if done by a minister or an official in accordance with a relevant authorisation: see the Race Relations Act 1976 s 19D (as added); and DISCRIMINATION vol 13 (2007 Reissue) para 470. As to the Human Rights Act 1998 see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

The Race Relations (Immigration and Asylum) Authorisation (in force April 2001), made under the Race Relations Act 1976 s 19D(3)(a) (as added) (see DISCRIMINATION vol 13 (2007 Reissue) para 470) authorises immigration officers to discriminate on nationality grounds in the examination of certain passengers (including detention pending examination, declining to give notice of grant or refusal of leave otherwise than in writing, and imposition of conditions) (Race Relations (Immigration and Asylum) Authorisation para 3), in the exercise of powers to grant or refuse leave to enter, and of seeking information and documents, before the person arrives in the United Kingdom (Race Relations (Immigration and Asylum) Authorisation para 4), and in prioritising removal directions (Race Relations (Immigration and Asylum) Authorisation para 5), if there is statistical evidence or specific intelligence or information showing or suggesting a pattern of breaches of immigration laws by persons of that nationality (Race Relations (Immigration and Asylum) Authorisation para 6). The Authorisation also allows priority to be given to the consideration of asylum claims from persons of a particular nationality, ethnic or national origin if a significant number of asylum claims from persons of that group are unfounded or raise similar issues under the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906) or the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) (Race Relations (Immigration and Asylum) Authorisation para 7), and authorises specially favourable treatment to participants in the British Universities North America Club programme (BUNAC) and in the Japan Youth Exchange Scheme, and to British overseas territories citizens (previously British dependent territories citizens: see para 2) from St Helena or Tristan da Cunha (Race Relations (Immigration and Asylum) Authorisation para 8) and authorises the non-provision of information relating to entitlement to enter or remain in the United Kingdom where such information is not available in a language which the person understands (Race Relations (Immigration and Asylum) Authorisation para 9): see the *Immigration Directorates' Instructions* Chapter 1 (General Provisions) Section 11 Annex EE (March 2001). The Race Relations (Immigration and Asylum) (No 3) Authorisation (in force October 2001), made under the Race Relations Act 1976 s 19D(3)(a) (as added) (see DISCRIMINATION vol 13 (2007 Reissue) para 470) authorises immigration officers or the Secretary of

State to require a national of Somalia, Afghanistan or Sri Lanka who makes a claim for asylum to submit to language analysis testing, and to take into account any refusal to submit to such testing when determining whether the applicant has assisted him in establishing the facts of the case: see the *Immigration Directorates' Instructions* Chapter 1 (General Provisions) Section 11 Annex EE1 (June 2002).

UPDATE

93-98 General Requirements

For provision relating to the supply of revenue and customs information see PARA 142B.

93 Requirements for admission to the United Kingdom

TEXT AND NOTES--As to requirements for leave to enter or remain as a Gurkha discharged from the British Army, see the Immigration Rules paras 276E-276K (added by Statement of Changes in Immigration Rules (HC Paper (2003-04) no 1112) para 15). See also *R (on the application of Limbu) v Secretary of State for the Home Department* [2008] EWHC 2261 (Admin), [2008] All ER (D) 122 (Sep) (discretionary scheme for veteran Gurkhas irrational: potentially decisive considerations in context of stated purpose of policy excluded, and ambiguities in expression of its scope liable to mislead applicants, entry clearance officers and immigration judges).

As to requirements for leave to enter or remain as the spouse or civil partner, or as the child, of an armed forces member who is exempt from immigration control under the Immigration Act 1971 s 8(4) (see PARA 89), see the Immigration Rules paras 276AD-276AI (added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 346) para 20; Immigration Rules paras 276AD-276AF substituted by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 88; Immigration Rules para 276AG-276I amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 22). For the meaning of civil partner' see PARA 121.

As to requirements for leave to enter or remain as a foreign or Commonwealth citizen discharged from HM Forces, see the Immigration Rules paras 276L-276Q (added by Statement of Changes in Immigration Rules (HC Paper (2003-04) no 1112) para 15). As to requirements for leave to enter or remain as the spouse or civil partner of a person present and settled in the United Kingdom or being granted settlement on the same occasion in accordance with the Immigration Rules paras 276E-276Q, see the Immigration Rules paras 276R-276W (added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 164) para 3; and substituted by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 86). As to requirements for leave to enter or remain as the child of a parent, parents or a relative so settled or being granted settlement, see the Immigration Rules paras 276X-276Z, 276AA-276AC (added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 164) para 3; and substituted by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 87).

NOTES 1, 4, 5, 9--SI 2004/1405 art 7 amended: SI 2007/3579.

NOTE 1--Immigration Act 1971 s 11(1) refer also to powers conferred under the Nationality, Immigration and Asylum Act 2002 ss 62, 68: 1971 Act s 11(1) (amended by the 2002 Act s 62(8); and the Nationality, Immigration and Asylum Act 2002 (Consequential and Incidental Provisions) Order 2003, SI 2003/1016).

A person who arrives in the United Kingdom overland and then travels by ship to another part of the United Kingdom by ship is not subject to the deeming provisions of the 1971 Act s 11(1): *R v Javaherifard* [2005] EWCA Crim 3231, [2005] All ER (D) 213

(Dec) (prospective immigrants crossed Northern Irish border by train and then took a ferry to England).

NOTES 3, 20--SI 2000/2326 reg 12 now Immigration (European Economic Area) Regulations 2006, SI 2006/1003, reg 11 (with savings).

TEXT AND NOTES 4-8--See also Immigration, Asylum and Nationality Act 2006 ss 40, 41 and PARA 143A.

NOTE 5--'Supplementary control zone' excludes the station of London-Waterloo on British territory: SI 1993/1813 Sch 1 (definition amended by SI 2007/2907). SI 1993/1813 Sch 2A amended: SI 2007/2907.

NOTE 13--Where the person's leave to enter derives, by virtue of the 1971 Act s 3A(3) (see PARA 96), from an entry clearance, he may also be examined by an immigration officer for the purpose of establishing whether the leave should be cancelled on the grounds that the person's purpose in arriving in the United Kingdom is different from the purpose specified in the entry clearance: Sch 2 para 2A(2A) (added by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 18).

NOTE 20--EC Commission Regulation 1251/70: repealed by EC Commission Regulation 635/2006 (OJ L112 26.4.2006 p 9); see now European Parliament and EC Council Directive 2004/38 (OJ L158 30.4.2004 p 77), on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states, art 17.

NOTE 30--For 'spouse' read 'spouse or civil partner': Immigration Rules para 23 (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 3). For the meaning of civil partner' see PARA 121.

NOTE 35--'Employment' also includes paid and unpaid work placements undertaken as part of a course or period of study: Immigration Rules para 6 (amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 40) para 1). An immigration officer may authorise a person to be a person who may obtain leave to enter the United Kingdom by passing through an automated gate: see the Immigration (Leave to Enter and Remain) (Amendment) Order 2000, SI 2000/1161, art 8A (added by SI 2010/957). No notice is to be given under SI 2000/1161 art 8 where a person is given leave to enter the United Kingdom by passing through an automated gate in accordance with art 8A: art 8(5) (added by SI 2010/957).

NOTE 38--Immigration Rules paras 32, 33 deleted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 2. 1971 Act s 31A repealed: Immigration, Asylum and Nationality Act 2006 s 50(3)(a), Sch 3.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/A. GENERAL REQUIREMENTS/94. Common travel area.

94. Common travel area.

The United Kingdom¹, the Channel Islands, the Isle of Man and the Irish Republic collectively form the 'common travel area'². Persons who have been examined for the purpose of immigration control at the point at which they entered the area do not normally require leave to enter any other part of it³ and neither arrival in nor departure from the United Kingdom on a local journey⁴ within the common travel area is subject to control under the immigration legislation⁵. Immigration officers are instructed to refuse leave to enter to a passenger arriving

in the United Kingdom who intends to enter any of the other parts of the common travel area but fails to satisfy the officer that he is acceptable to the immigration authorities there⁶. Effect may be given in the United Kingdom to leave given in one of the Islands as if it had been given in the United Kingdom⁷; and the provisions of the Immigration Act 1971 itself may be extended to any of the Islands by Order in Council⁸.

The Secretary of State⁹ may by order¹⁰ impose restrictions on non-British citizens who are neither regarded as having leave to enter¹¹ nor holders of leave to enter granted before their arrival and who lawfully enter the United Kingdom on a local journey from a place in the common travel area after having entered any of the Islands or the Republic of Ireland on coming from a place outside the area, or after having left the United Kingdom while having a limited leave to enter or remain, which has since expired¹². The restrictions may relate to the period for which such persons may remain, to their employment or occupation and to a requirement to register with the police¹³.

The exemption from immigration control of persons on local journeys within the common travel area¹⁴ does not affect the operation of a deportation order¹⁵, and a non-British citizen may not enter the United Kingdom without leave on such a journey if: (1) he is on arrival given written notice by an immigration officer stating that the Secretary of State has directed that he should not be given entry on the ground that his exclusion is conducive to the public good as being in the interests of national security, and he is accordingly refused leave to enter¹⁶; or (2) he has at any time been refused leave to enter the United Kingdom and has not since then been given leave to enter or remain¹⁷.

The Secretary of State may by order¹⁸ exclude any of the Islands (because of differences between the immigration laws of the United Kingdom and those of that Island) or the Republic of Ireland from the provisions relating to the common travel area¹⁹ for such purposes as may be specified in the order²⁰.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Immigration Act 1971 s 1(3); Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 15. Orders in Council under the Immigration Act 1971 s 10 (as amended) may include provision for excluding the Republic of Ireland from s 1(3) either generally or for any specified purposes: see s 10(2); and para 93 note 1 ante. As from a day to be appointed, s 10(2) is amended, but not so as to affect the meaning, by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 47(1), (4). At the date at which this volume states the law no such day had been appointed. At the date at which this volume states the law the power under the Immigration Act 1971 s 10(2) had not been exercised so as to exclude the Republic of Ireland from s 1(3), but an order had been made affecting the Republic in other ways: see the Immigration (Entry Otherwise than by Sea or Air) Order 2002, SI 2002/1832; and para 152 post.

3 Immigration Act 1971 s 1(3); Immigration Rules para 15. This does not, however, apply to certain persons who enter the United Kingdom through the Republic of Ireland, such as those who merely passed through the Republic, persons requiring visas, persons who entered the Republic unlawfully, persons who are subject to directions given by the Secretary of State for their exclusion from the United Kingdom on the ground that their exclusion is conducive to the public good and persons who entered the Republic from the United Kingdom after entering there unlawfully or overstaying their leave: see the Immigration Rules para 15; and the Immigration (Control of Entry through Republic of Ireland) Order 1972, SI 1972/1610, art 3 (amended by SI 1979/730).

4 A journey is a local journey in relation to the common travel area if, but only if, it begins and ends in the common travel area and is not made by a ship or aircraft which: (1) in the case of a journey to a place in the United Kingdom, began its voyage from, or has during its voyage called at, a place not in the common travel area; or (2) in the case of a journey from a place in the United Kingdom, is due to end its voyage in, or call in the course of its voyage at, a place not in the common travel area: Immigration Act 1971 s 11(4). As to the meaning of 'ship' see para 87 note 2 ante. As to the meaning of 'aircraft' see para 87 note 3 ante.

5 Ibid s 1(3). It is not, however, lawful for a non-British citizen to enter the United Kingdom without leave from any of the Islands where his presence was unlawful under the immigration laws of that Island: see s 9(1), Sch 4 para 4 (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2). For the meaning of 'the Islands' see para 83 note 12 ante. As to British citizens see paras 8, 23-43 ante.

6 See the Immigration Rules para 320(4).

7 The Immigration Act 1971 Sch 4 (as amended) has effect for the purpose of taking account in the United Kingdom of the operation in any of the Islands of the immigration laws there: s 9(1). A person who has been given leave to enter or remain on one of the Islands with or without conditions or has been refused leave is to be treated as if similar leave had been given subject to similar conditions (or refused, as the case may be) under United Kingdom law: see Sch 4 para 1(1), (2), (4) (Sch 4 para 1(1), (2) amended by the British Nationality Act 1981 Sch 4 para 2). Any such leave may be varied or revoked as if it had been granted under United Kingdom law (Immigration Act 1971 Sch 4 para 1(3)), but a decision taken in one of the Islands cannot be appealed against under United Kingdom law (Sch 4 para 1(5)). As to the operation of Sch 4 (as amended) see *Teixeira v Secretary of State for the Home Department* [1989] Imm AR 432, IAT (employment in Jersey qualified the appellant for indefinite leave to remain in the United Kingdom).

8 Immigration Act 1971 s 36. As to the extension of the principal legislation concerned with immigration and nationality to the Isle of Man, Guernsey and Jersey see para 83 note 8 ante.

9 As to the Secretary of State see para 2 ante.

10 Any such order must be made by statutory instrument subject to annulment by resolution of either House of Parliament: Immigration Act 1971 s 9(7). As to proof of an order see para 86 note 15 ante.

11 Ie by virtue of ibid Sch 4 (as amended): see the text and note 7 supra.

12 Ibid s 9(2) (amended by the British Nationality Act 1981 Sch 4 para 2; and modified by the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 14). The statutory provisions applying to a limited leave or to conditions attached to a limited leave (see para 86 ante) apply in respect of persons subject to restrictions under the Immigration Act 1971 s 9(2) (as amended): s 9(3). Thus breach of such restrictions gives rise to what is now the power to remove under the Immigration and Asylum Act 1999 s 10 (see para 154 post) (formerly the power to deport under the Immigration Act 1971 s 3(5)(a) (as originally enacted)): *Kaya v Secretary of State for the Home Department* [1991] Imm AR 572. See also note 13 infra.

13 Immigration Act 1971 s 9(2). As to the effect of a requirement to register with the police see para 97 post. Further restrictions are imposed on persons (other than persons who arrive in the United Kingdom with an extant leave to enter or remain granted before their arrival or who require leave to enter by virtue of the Immigration (Control of Entry through Republic of Ireland) Order 1972, SI 1972/1610, art 3 (as amended) (see note 3 supra) or the Immigration Act 1971 s 9(4) (as amended) who neither have the right of abode in the United Kingdom (ie under s 2 (as amended) (see paras 84-85 ante)) nor are citizens of the Republic of Ireland, who enter the United Kingdom on a local journey from the Republic of Ireland: see the Immigration (Control of Entry through Republic of Ireland) Order 1972, SI 1972/1610, art 4(1), (2) (art 4(1) amended by SI 1982/1028; and the Immigration (Control of Entry through Republic of Ireland) Order 1972, SI 1972/1610, art 4(2) amended by SI 2000/1776). Any such person who enters the United Kingdom on a local journey from the Republic of Ireland after having entered the Republic on coming from a place outside the common travel area and who is not a visa national whose visa contains the words 'short visit': (1) may only remain in the United Kingdom for up to three months; (2) may not, unless he is a European Community national, engage in any occupation for reward; and (3) may not, unless he is a European Community national other than a national of Portugal or Spain, engage in any employment: Immigration (Control of Entry through Republic of Ireland) Order 1972, SI 1972/1610, art 4(1)(a), (3), (4) (art 4(4) amended by SI 1980/1859; SI 1985/1854; SI 1987/2092). Any such person who enters the United Kingdom on a local journey from the Republic of Ireland after having entered the Republic on coming from a place outside the common travel area who is a visa national and whose visa contains the words 'short visit': (a) may only remain in the United Kingdom for up to one month; (b) may not engage in any occupation for reward or any employment; and (c) unless he is aged under 16, will be required to register with the police: Immigration (Control of Entry through Republic of Ireland) Order 1972, SI 1972/1610, art 4(1)(a), (5), (6). Any such person who so enters the United Kingdom after having entered the Republic of Ireland from the United Kingdom whilst having a limited leave to enter or remain there which has since expired is also subject to the restrictions contained in art 4 (as amended) except that, whether a visa national or not, he may only remain for seven days: art 4(7). See also *R v Secretary of State for the Home Department, ex p Man Keng Wuan* [1989] Imm AR 501. A visa national is a person who is required to produce a passport or other identity document endorsed with a United Kingdom visa (see para 96 post) and, for these purposes, includes a stateless person (see the Immigration (Control of Entry through Republic of Ireland) Order 1972, SI 1972/1610, art 2(1)).

14 Ie under the Immigration Act 1971 s 1(3): see the text and notes 1-5 supra.

15 Ibid s 9(4) (amended by the British Nationality Act 1981 Sch 4 para 2). These provisions do not apply to anyone regarded as having leave to enter by virtue of the Immigration Act 1971 Sch 4 (as amended) (see the text and note 7 supra): s 9(4). As to the removal of persons without leave to enter see para 152 post. As to deportation orders see para 160 et seq post.

The Immigration Act 1971 has effect in relation to a person who is subject to an order made under the immigration laws of any of the Islands under which a person is, or has been, ordered to leave the Island and

forbidden to return (an 'Islands deportation order') as if the order were a deportation order made against him under the Immigration Act 1971 (Sch 4 para 3(1), (6) (Sch 4 para 3 substituted by the Immigration and Asylum Act 1999 Sch 14 paras 43, 70)), unless the person concerned is a British citizen, an EEA national, a member of the family of an EEA national, or a member of the family of a British citizen who is neither such a citizen nor an EEA national (Sch 4 para 3(2) (as so substituted)). The Secretary of State may direct in relation to a particular Islands deportation order that the exemption conferred by Sch 4 para 3(2) (as substituted) on EEA nationals and members of their families and British citizens' family members who are neither British citizens nor EEA nationals does not apply (Sch 4 para 3(4) (as so substituted)), but he cannot revoke an Islands deportation order (Sch 4 para 3(3) (as so substituted)). Nothing in Sch 4 para 3 (as substituted) makes it unlawful for a person in respect of whom an Islands deportation order is in force in any of the Islands to enter the United Kingdom on his way from that Island to a place outside the United Kingdom: Sch 4 para 3(5) (as so substituted). For the meaning of 'EEA national' see para 182 note 3 post; definition applied by Sch 4 para 3(7). As to proof of EEA nationality see para 182 note 15 post; provisions applied by Sch 4 para 3(7). As to who are members of a person's family see para 182 note 4 post; provisions applied by Sch 4 para 3(7).

16 Ibid s 9(4)(a). See note 15 supra.

17 Ibid s 9(4)(b). See note 15 supra.

18 See note 10 supra.

19 Ie under the Immigration Act 1971 s 1(3): see the text and notes 1-5 supra.

20 Ibid s 9(5), (6) (s 9(5) amended by the British Nationality Act 1981 s 52(8), Sch 9). In pursuance of this power the Secretary of State has provided that the Republic of Ireland is excluded from the provisions of the Immigration Act 1971 s 1(3) (see the text and notes 1-5 supra) in relation to: (1) any person other than a citizen of the Republic who arrives in the United Kingdom on an aircraft which began its flight in the Republic but who only entered the Republic (and was not given leave to land there) in the course of a journey to the United Kingdom which began outside the common travel area; and (2) any other person who arrives in the United Kingdom on a local journey from the Republic: (a) who is a visa national (see note 13 supra) who has no valid visa for his entry into the United Kingdom; (b) who has entered the Republic unlawfully from a place outside the common travel area; (c) who has entered the Republic from a place in the United Kingdom or Islands after entering there unlawfully, or, if he had a limited leave to enter or remain there, after the expiry of the leave (provided that in either case he has not subsequently been given leave to enter or remain in the United Kingdom or any of the Islands); or (d) in respect of whom directions have been given by the Secretary of State that he should not be given entry to the United Kingdom on the ground that his exclusion is conducive to the public good: Immigration (Control of Entry through Republic of Ireland) Order 1972, SI 1972/1610, art 3 (amended by SI 1979/730). As to the removal of such persons see para 152 post. See also *R v Secretary of State for the Home Department, ex p Mohan* [1989] Imm AR 436. As to illegal entry through the Republic see eg *R v Governor of Ashford Remand Centre, ex p Bouzagou* [1983] Imm AR 69, CA (no immigration officer, only police officer, at port of entry so no valid leave in writing; held to be an illegal entrant); *R v Secretary of State for the Home Department, ex p Mohan* supra.

UPDATE

93-98 General Requirements

For provision relating to the supply of revenue and customs information see PARA 142B.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/A. GENERAL REQUIREMENTS/95. Passengers in transit.

95. Passengers in transit.

A person, other than a member of the crew of a ship, aircraft, hovercraft, hydrofoil or train, seeking leave to enter the United Kingdom¹ as a visitor in transit, may be admitted for a period not exceeding 48 hours with a prohibition on employment provided the immigration officer is satisfied that he: (1) is in transit to a country outside the common travel area²; (2) has both the means³ and the intention of proceeding at once to another country; (3) is assured of entry

there; and (4) intends and is able to leave the United Kingdom within 48 hours⁴. An application for an extension of stay beyond this period from a person so admitted must be refused⁵. If the person is a visa national⁶ he requires a visa for the purpose of gaining admission as a visitor in transit notwithstanding these provisions⁷.

The Secretary of State⁸ may by order require persons of any description specified in the order who on arrival in the United Kingdom pass through to another country or territory without entering the United Kingdom to hold a visa for that purpose⁹.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to the common travel area see para 94 ante.

3 'The means' refers not only to the financial means but also to the physical means: *R v Secretary of State for the Home Department, ex p Connhye* [1987] Imm AR 478.

4 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') paras 47-49. The immigration officer must make it clear that he is giving leave to enter for purposes of transit only, otherwise the passenger will be treated as an ordinary visitor: *Low v Secretary of State for the Home Department* [1995] Imm AR 435. As to the meaning of 'employment' see para 93 note 35 ante.

5 Immigration Rules para 50.

6 I.e. a person who is required to produce a passport or other identity document endorsed with a United Kingdom visa: see para 96 post.

7 See *Immigration Officer, Heathrow v Kapoor* [1991] Imm AR 357 (refusal of leave to enter to an Indian visa national seeking an overnight stay in transit upheld because not in possession of a relevant valid visa).

8 As to the Secretary of State see para 2 ante.

9 Immigration (Carriers' Liability) Act 1987 s 1A(1) (s 1A added by the Asylum and Immigration Appeals Act 1993 s 12(1), (3)). As from a day to be appointed, the Immigration (Carriers' Liability) Act 1987 s 1A (as added) is repealed by the Immigration and Asylum Act 1999 s 169(3), Sch 16. At the date at which this volume states the law no such day had been appointed.

An order: (1) may specify a description of persons by reference to nationality, citizenship, origin or other connection with any particular country or territory, but not by reference to race, colour or religion; (2) may not provide for the requirement imposed by the order to apply to any person who under the Immigration Act 1971 has the right of abode in the United Kingdom; (3) may provide for any category of persons of a description specified in the order to be exempted from the requirement imposed by the order; and (4) may make provision about the method of application for visas required by the order: Immigration (Carriers' Liability) Act 1987 s 1A(2) (as so added). In pursuance of this power the Secretary of State has ordered that a national or citizen of Afghanistan, Colombia, the Democratic Republic of the Congo, Ecuador, Eritrea, Ethiopia, the Federal Republic of Yugoslavia, Ghana, Iran, Iraq, Libya, Nigeria, the People's Republic of China, the Republic of Croatia, the Slovak Republic, Somalia, Sri Lanka, Turkey and Uganda, and a person holding a travel document issued by the purported Turkish Republic of Northern Cyprus or the former Socialist Federal Republic of Yugoslavia, who on arrival in the United Kingdom passes through to another country or territory without entering the United Kingdom, must hold a visa for that purpose unless he has the right of abode in the United Kingdom under the Immigration Act 1971, is also a national of an EEA state, or, in the case of a national or citizen of the People's Republic of China, holds a passport issued by either the Hong Kong Special Administrative Region or the Macao Special Administrative Region: Immigration (Transit Visa) Order 1993, SI 1993/1678, art 2, Schedule (art 2 amended by SI 1998/55; SI 1998/1014; SI 2000/1381; SI 2002/825; and the Immigration (Transit Visa) Order 1993, SI 1993/1678, Schedule substituted by SI 2000/1381). 'EEA state' means a country which is a contracting party to the Agreement on the European Economic Area (Oporto, 2 May 1992; OJ L1, 3.1.94, p 3; Cm 2073) as adjusted by the Protocol (Brussels, 17 March 1993; OJ L1, 3.1.94, p 571; Cm 2183): Immigration (Transit Visa) Order 1993, SI 1993/1678, art 1A (added by SI 2000/1381). An application for a transit visa may be made to any British High Commission, Embassy or Consulate which accepts such applications: Immigration (Transit Visa) Order 1993, SI 1993/1678, art 3. An order under the Immigration (Carriers' Liability) Act 1987 s 1A (as added) is made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 1A(3) (as so added).

As from a day to be appointed, the Immigration (Carriers' Liability) Act 1987 s 1A (as added) is replaced by the Immigration and Asylum Act 1999 s 41, which re-states the existing provisions (subject to the removal of references to 'territory' as an alternative to 'country') and defines the persons who may be specified as 'transit passengers' and the visa which is required to be held as a 'transit visa'. At the date at which this volume states

the law no such day had been appointed. As to the making of orders under the Immigration and Asylum Act 1999 s 41 see para 141 note 8 post.

UPDATE

93-98 General Requirements

For provision relating to the supply of revenue and customs information see PARA 142B.

95 Passengers in transit

NOTE 9--Day now appointed for repeal of 1987 Act s 1A and its replacement by 1999 Act s 41: SI 2002/2815. SI 1993/1678 replaced: Immigration (Passenger Transit Visa) Order 2003, SI 2003/1185 (amended by SI 2003/2628, SI 2004/1304, SI 2005/492, SI 2006/493, SI 2009/198, SI 2009/1229, SI 2009/1233). References to the Federal Republic of Yugoslavia, Libya, the Republic of Croatia and the Slovak Republic omitted; a national or citizen of Albania, Algeria, Angola, Bangladesh, Belarus, Bolivia, Burma, Burundi, Cameroon, Congo, the Former Yugoslav Republic of Macedonia, Gambia, Guinea, Guinea-Bissau, India, Ivory Coast, Kenya, Lebanon, Lesotho, Liberia, Malawi, Moldova, Mongolia, Nepal, Pakistan, Palestinian Territories, Rwanda, Senegal, Serbia and Montenegro, Sierra Leone, South Africa, Sudan, Swaziland, Tanzania, Vietnam and Zimbabwe also requires a transit visa: art 2(1), (2), Sch 1 (art 2(1) amended by SI 2009/198, SI 2009/1233; Sch 1 substituted by SI 2003/2628 and amended by SI 2004/1304, SI 2005/492, SI 2006/493, SI 2009/198, SI 2009/1229). The reference to the former Socialist Federal Republic of Yugoslavia is now to the former Socialist Republic of Yugoslavia or the former Federal Republic of Yugoslavia and a person holding a travel document issued by the former Zaire also requires a transit visa: SI 2003/1185 art 2(3). A person who holds a valid passport issued by the Republic of South Africa, and who has not previously entered the United Kingdom lawfully using that passport will require a transit visa: SI 2003/1185 art 2(3A) (added by SI 2009/198). A person who holds a passport issued by the Republic of Venezuela that does not contain biometric information held in an electronic chip also requires a transit visa: SI 2003/1185 art 2(3B) (added by SI 2009/1229).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/A. GENERAL REQUIREMENTS/96. Entry clearance and leave to enter.

96. Entry clearance and leave to enter.

'Entry clearance' means a visa, entry certificate or other document (but not a work permit) which, in accordance with the Immigration Rules, is to be taken as evidence or the requisite evidence of a person's eligibility, though he is not a British citizen¹, for entry into the United Kingdom². Visa nationals (that is, nationals and citizens of certain foreign and Commonwealth countries or territorial entities³, stateless persons⁴ and other holders of non-national documents⁵), and other persons seeking entry for a purpose for which prior entry clearance is required, must produce to the immigration officer⁶ a passport or other identity document endorsed with a United Kingdom entry clearance issued for the purpose for which entry is sought, and are to be refused leave to enter if they do not have such current entry clearance⁷. Any other person who wishes to ascertain in advance whether he is eligible for admission to the

United Kingdom may apply for the issue of entry clearance⁸. Entry clearance takes the form of a visa for visa nationals or an entry certificate for non-visa nationals⁹.

The Secretary of State may by order¹⁰ provide that, in such circumstances as may be prescribed, an entry visa, or such other form of entry clearance as may be prescribed, is to have effect as leave to enter the United Kingdom¹¹. In pursuance of this power the Secretary of State has ordered that an entry clearance which specifies the purpose for which the holder wishes to enter the United Kingdom and is endorsed with either the conditions to which it is subject or a statement that it is to have effect as indefinite leave to enter has effect, to a limited extent¹² and subject to specified conditions¹³, as leave to enter the United Kingdom¹⁴. For the purposes of the Immigration Rules, the holder of an entry clearance which satisfies these requirements is treated as a person who has arrived in the United Kingdom with leave to enter which is in force but was given to him before his arrival¹⁵.

An entry clearance may be revoked if the entry clearance officer is satisfied: (1) that false representations were employed or material facts not disclosed, either in writing or orally, and whether or not to the holder's knowledge, for the purpose of obtaining the clearance¹⁶; (2) that a change of circumstances¹⁷ since the clearance was issued has removed the basis of the holder's claim to admission¹⁸; or (3) that exclusion would be conducive to the public good¹⁹. A person holding a current²⁰ entry clearance, duly issued, which does not operate as leave to enter, may be refused entry on the same grounds²¹ or where refusal is justified on grounds of restricted returnability, on medical grounds, on grounds of criminal record, or because the person in question is the subject of a deportation order²².

Leave to enter which is in force on a person's arrival in, or whilst he is outside the United Kingdom, whether or not conferred by entry clearance, may be cancelled (on arrival or while the person is outside the United Kingdom): (a) where there has been a change of circumstances warranting cancellation²³; (b) where leave was obtained by the person in question giving false information or failing to disclose material facts²⁴; (c) where for medical reasons it is undesirable to admit the person²⁵; (d) where the person's exclusion is conducive to the public good²⁶; (e) where the person is outside the United Kingdom and has failed to supply information²⁷ on request to the immigration officer or Secretary of State²⁸; or (f) where the person is an excluded person²⁹.

As from a day to be appointed³⁰ the Secretary of State: (i) may require that, in circumstances specified by the Immigration Rules, security³¹ is to be given in advance of the giving of entry clearance³²; (ii) may, in circumstances so specified, accept security with respect to a person who is applying for entry clearance but for whom security is not required³³; and (iii) where security has been provided under head (i) or head (ii) above, may refuse an application for extension of leave or leave to remain if appropriate security is not provided, or continued, with respect to the applicant³⁴. The Immigration Rules must make provision as to the circumstances in which any security so provided is to be repaid, released or otherwise cancelled³⁵ or is to be forfeited or otherwise realised by the Secretary of State³⁶.

1 As to British citizens see paras 8, 23-43 ante.

2 Immigration Act 1971 s 33(1) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2; and the Immigration Act 1988 s 10, Schedule para 5); Immigration and Asylum Act 1999 s 167(2); Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 30.

A special voucher does not fall within this definition: see *Re Amin* [1983] 2 AC 818, [1983] 2 All ER 864, HL. A 'visa exempt' stamp in a passport is not itself a visa: *Balogun v Secretary of State for the Home Department* [1989] Imm AR 603, CA. As to the general grounds on which entry clearance may be refused see the Immigration Rules paras 320-321; and para 136 post. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

A person must, on arrival in the United Kingdom or when seeking entry through the Channel Tunnel, produce on request by the immigration officer such information as may be required to establish whether he requires leave

to enter the United Kingdom and, if so, whether and on what terms leave to enter should be given: Immigration Rules para 11(ii).

3 The nationals and citizens of Afghanistan, Albania, Algeria, Angola, Armenia, Azerbaijan, Bahrain, Bangladesh, Belarus, Benin, Bhutan, Bosnia-Herzegovina, Bulgaria, Burkina Faso, Burma, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, the People's Republic of China (except those holding passports issued by the Hong Kong or Macao Special Administrative Regions), Colombia, Comoros, Congo, Democratic Republic of the Congo (Zaire), Republic of Croatia, Cuba, Djibouti, Dominican Republic, Ecuador, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Georgia, Ghana, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iran, Iraq, Ivory Coast, Jordan, Kazakhstan, Kenya, Kirgizstan, North Korea, Kuwait, Laos, Lebanon, Liberia, Libya, Macedonia, Madagascar, Maldives, Mali, Mauritania, Mauritius, Moldova, Mongolia, Morocco, Mozambique, Nepal, Niger, Nigeria, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Romania, Russia, Rwanda, Sao Tome e Principe, Saudi Arabia, Senegal, Sierra Leone, Slovak Republic, Somalia, Sri Lanka, Sudan, Surinam, Syria, Taiwan, Tajikistan, Tanzania, Thailand, Togo, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, Uzbekistan, Vietnam, Yemen, Zambia, and the territories formerly comprising the Socialist Federal Republic of Yugoslavia (excluding Croatia and Slovenia), and persons holding passports or travel documents issued by the former Soviet Union or by the former Socialist Federal Republic of Yugoslavia: Immigration Rules para 6, Appendix 1 paras 1(a), (b), 2(d), (e) (Immigration Rules para 6 amended by Statement of Changes in Immigration Rules (Cm 3953) (1998) para 1); and Immigration Rules Appendix 1 substituted by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 329) para 7; renumbered by Statement of Changes in Immigration Rules (Cm 3953) (1998) para 5; and amended by Statement of Changes in Immigration Rules (HC Paper (1996-97) no 31) para 12; Statement of Changes in Immigration Rules (Cm 3669) (1997) para 2; Statement of Changes in Immigration Rules (HC Paper (1996-97) no 161) para 1; Statement of Changes in Immigration Rules (Cm 4065) (1998) para 1; Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 22) para 1; and Statement of Changes in Immigration Rules (HC Paper (2001-02) no 735)). As to the Commonwealth countries see para 11 note 4 ante; and COMMONWEALTH.

4 Immigration Rules Appendix 1 para 1(c) (as substituted and renumbered: see note 3 supra). As to statelessness see para 13 ante. As to refugees see note 5 infra.

5 Immigration Rules Appendix 1 para 1(d) (as substituted and renumbered: see note 3 supra). Persons who qualify for admission to the United Kingdom as returning residents in accordance with the Immigration Rules para 18 (see para 135 post), persons who seek leave to enter the United Kingdom within the period of their earlier leave and for the same purpose as that for which that leave was granted (unless it was for a period of six months or less or was extended by statutory instrument), and persons holding refugee travel documents issued under the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906) by countries which are signatories of the Council of Europe Agreement of 1959 on the Abolition of Visas for Refugees if coming on visits of three months or less, do not need a visa for the United Kingdom: Immigration Rules Appendix 1 para 2 (as substituted and renumbered: see note 3 supra).

6 As to the use of the terms 'immigration officer' and 'entry clearance officer' see the Immigration Rules para 26.

7 Immigration Rules para 24. As to the liability of carriers for passengers without proper documentation see para 203 post.

Leave to enter must be refused if a valid entry clearance in the appropriate capacity is not produced to the immigration officer on arrival by a person seeking leave to enter as:

- 50 (1) a working holidaymaker (Immigration Rules para 97);
- 51 (2) a teacher or language assistant under an exchange scheme (Immigration Rules para 112);
- 52 (3) a journalist (Immigration Rules para 138);
- 53 (4) the sole representative of an overseas firm (Immigration Rules para 146);
- 54 (5) a private servant in a diplomatic household (Immigration Rules para 154);
- 55 (6) a minister of religion, missionary or member of a religious order (Immigration Rules para 172);
- 56 (7) a member of the operational ground staff of an overseas-owned airline (Immigration Rules para 180);
- 57 (8) a person with United Kingdom ancestry (Immigration Rules para 188);
- 58 (9) a person intending to establish himself in business (Immigration Rules paras 205, 216);

- 59 (10) an investor (Immigration Rules para 226);
- 60 (11) a writer, composer or artist (Immigration Rules para 234);
- 61 (12) a person seeking to exercise access rights to children resident in the United Kingdom (Immigration Rules para 248);
- 62 (13) a retired person of independent means (Immigration Rules para 265);
- 63 (14) the spouse or child of a person with limited leave to enter or remain in accordance with the provisions of the Immigration Rules relating to teachers and language assistants coming to the United Kingdom under approved exchange schemes (Immigration Rules paras 124, 127);
- 64 (15) the spouse, unmarried partner or child of a person seeking to enter or remain in the United Kingdom for employment, as a person of United Kingdom ancestry, as a minister of religion or missionary, for establishment in business, or as an investor, writer, composer, artist or retired person of independent means (Immigration Rules paras 196, 199, 242, 245, 273, 276, 295L (para 295L added by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 32));
- 65 (16) the child of a working holidaymaker (Immigration Rules para 103);
- 66 (17) the spouse or child of a special voucher holder (Immigration Rules para 254); and
- 67 (18) the spouse, fiancé or fiancée, unmarried partner, child (including an adopted child and a child coming for adoption), parent, grandparent or other dependent relative of a person present and settled or being admitted for settlement in the United Kingdom (Immigration Rules paras 283, 292, 295C, 300, 303C, 313, 316, 316C, 319 (para 295C added by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 32; and the Immigration Rules paras 303C, 316C added by Statement of Changes in Immigration Rules (Cm 4851) (2000) paras 37, 41)).

For the purposes of the Immigration Rules, 'parent' includes the stepfather of a child whose father is dead; the stepmother of a child whose mother is dead; the father as well as the mother of an illegitimate child where he is proved to be the father; an adoptive parent, provided the child was adopted in accordance with a decision taken by the competent administrative authority or court in a country whose adoption orders are recognised by the United Kingdom (except that an adopted child may not make an application for leave to enter or remain in order to accompany, join or remain with an adoptive parent under the Immigration Rules paras 297-303 (as amended) (see paras 121, 125-126 post)); and, in the case of a child born in the United Kingdom who is not a British citizen, a person to whom there has been a genuine transfer of parental responsibility on the ground of the original parent's or parents' inability to care for the child: Immigration Rules para 6 (amended by Statement of Changes in Immigration Rules (Cm 5253) (2001) para 2(b)). As to the meaning of 'employment' see para 93 note 35 ante. As to the admittance of persons holding special vouchers see para 120 post.

Although these rules fetter the statutory powers of immigration officers, they are nevertheless intra vires: see *R v Secretary of State for the Home Department, ex p Ounejma* [1989] Imm AR 75, DC.

Visa requirements for persons intending to establish themselves in business do not generally nullify or impair the rights of establishment under Association Agreements and are lawful: see Case C-257/99 *R v Secretary of State for the Home Department, ex p Barkoci and Malik* [2001] 3 CMLR 1124, ECJ, sub nom *R (on the application of Barkoci) v Secretary of State for the Home Department* [2001] All ER (EC) 903, ECJ. See further para 225 et seq post. As to Association Agreements with the European Community see para 114 post.

8 Immigration Rules para 24. An applicant for entry clearance must be outside the United Kingdom and Islands at the time of the application: Immigration Rules para 28. For the meaning of 'United Kingdom and Islands' see para 83 note 12 ante.

An application for entry clearance as a visitor may be made at any post designated by the Secretary of State to accept applications for that purpose and from that category of applicant: Immigration Rules para 28. 'Post' means a British diplomatic mission, British consular post or the office of any person outside the United Kingdom and Islands authorised by the Secretary of State to accept applications for entry clearance: Immigration Rules para 29. As to the Secretary of State see para 2 ante. A list of designated posts is published by the Foreign and Commonwealth Office: Immigration Rules para 29. See also *Secretary of State for the Home Department v Abdi* [1995] Imm AR 570, CA (application by Somali citizen for entry clearance cannot be made directly to the Home Office in reliance on the scheme for Somali family reunion).

Any other application must be made to such a post in the country or territory where the applicant is living or, where there is no such post, to the appropriate designated post outside that country: Immigration Rules para 28.

An applicant should specify which of the Immigration Rules the application is made under. However, if he is unable or unwilling to commit himself and there is uncertainty as to the intended duration of stay, the application must be considered as an application for settlement if ordinary residence is contemplated: see *R v Immigration Appeal Tribunal, ex p Rafique* [1990] Imm AR 235, CA; *Rashida Bibi v Immigration Appeal Tribunal* [1988] Imm AR 298, CA.

Application forms for entry clearance were not mandatory, and a request in quite unambiguous terms for an entry certificate to be issued to a particular person has been held to effect a valid application (see *Brown v Entry Clearance Officer, Kingston* [1976] Imm AR 119, IAT; *Prajapati v Immigration Appeal Tribunal* [1982] Imm AR 56, CA), but the Immigration Act 1971 has been amended so as to provide that where a form is prescribed, an application must be made in that form (see s 31A (added by the Immigration and Asylum Act 1999 s 165)). An application for entry clearance is not made until any fee required under the Consular Fees Act 1980 has been paid: see the Immigration Rules para 30. As to the fees see the Consular Fees (No 2) Order 1999, SI 1999/3132 (as amended); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 30. Fees are not payable where the application is to join a refugee as his dependant: *Secretary of State for the Home Department v Abdi* (24 May 1994, unreported), IAT. Reduced fees are payable for entry clearance to join a sponsor who has been granted exceptional leave to remain in the United Kingdom.

Applications must be considered in accordance with the Immigration Rules in the light of the circumstances existing at the time of the decision except that a child will not be refused an entry clearance solely on account of his becoming over the age of 18 between receipt of his application to join a parent or parents settled or admitted for settlement and the date of the decision on it: Immigration Rules para 27. This concession does not apply to children joining or accompanying parents who are not settled or being admitted with a view to settlement.

9 Immigration Rules para 30.

10 As to the making and content of such orders see para 86 note 5 ante.

11 Immigration Act 1971 s 3A(3), (6) (s 3A added by the Immigration and Asylum Act 1999 s 1). Any such order may, in particular, provide for a clearance to have effect as leave to enter on a prescribed number of occasions during the period for which the clearance has effect, on an unlimited number of occasions during that period, or subject to prescribed conditions; and the order may provide for a clearance which has effect as leave to enter on a prescribed or unlimited number of occasions during the period for which the clearance has effect to be varied by the Secretary of State or an immigration officer so that it ceases to have that effect: Immigration Act 1971 s 3A(4) (as so added). Only conditions of a kind that could be imposed on leave to enter given under s 3 (as amended) (see para 86 ante) may be prescribed in the order: s 3A(5), (6) (as so added).

12 An entry clearance granted for the purpose of entry to the United Kingdom as a visitor under the Immigration Rules (a 'visit visa') has effect during its period of validity (ie the period beginning on the day on which the entry clearance becomes effective and ending on the day on which it expires) as leave to enter the United Kingdom on an unlimited number of occasions, although on each occasion the holder arrives in the United Kingdom (or, seeking to arrive in the United Kingdom through the tunnel system, enters a control zone in France or Belgium or a supplementary control zone in France) he is treated as having been granted, before arrival or entry into the control zone or supplementary control zone, leave to enter for a limited period beginning on the date of arrival or entry into the control zone or supplementary control zone, being six months if six months or more remain of the visa's period of validity, or the visa's remaining period of validity if less than six months: Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, arts 1(3), 2, 4(1), (2), (4) (art 4(2) modified for the purposes of the security arrangements for the Channel Tunnel by SI 1993/1813; SI 2000/1775; SI 1994/1405; SI 2001/1544). Any other form of entry clearance has effect as leave to enter the United Kingdom on one occasion during its period of validity and, on arrival in the United Kingdom or entry into a control zone in France or Belgium or a supplementary control zone in France seeking to arrive in the United Kingdom through the tunnel system, the holder is treated for the purposes of the Immigration Acts as having been granted, before arrival or entry into the control zone, leave to enter the United Kingdom either for an indefinite period (where the entry clearance is endorsed with a statement that it is to have effect as indefinite leave to enter the United Kingdom) or for the period beginning on the date on which the holder arrives in the United Kingdom and ending on the date of expiry of the entry clearance (where the entry clearance is endorsed with conditions): Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, arts 2, 4(3), (4) (art 4(3) modified for the purposes of the security arrangements for the Channel Tunnel by SI 1993/1813; SI 1994/1405; SI 2000/1775; SI 2001/1544). For the meanings of 'control zone' and 'supplementary control zone' see para 93 note 5 ante. For the meaning of 'tunnel system' see para 196 note 3 ante. For the meaning of 'the Immigration Acts' see para 83 ante.

13 An entry clearance has effect as leave to enter subject to any conditions, being conditions of a kind that may be imposed on leave to enter, to which the entry clearance is subject and which are endorsed on it: Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, arts 2, 5. As to the conditions which may be imposed see the Immigration Act 1971 s 3 (as amended); Immigration Rules para 8; and paras 86, 93 ante.

14 Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, arts 2, 3. See also the Immigration Rules para 25A (added by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 8). However, if the holder of an entry clearance which does not, at the time, have effect as leave to enter the United Kingdom seeks leave to enter the United Kingdom at any time before his departure for, or in the course of his journey to, the United Kingdom and is refused leave to enter under the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 7 (see para 86 ante), the entry clearance does not have effect as leave to enter: arts 2, 6(3).

If the holder of an entry clearance arrives in the United Kingdom (or, seeking to arrive in the United Kingdom through the tunnel system, enters a control zone in France or Belgium or a supplementary control zone in France) before the day on which the clearance becomes effective, or seeks to enter the United Kingdom for a purpose other than that specified in the clearance, an immigration officer may cancel the entry clearance: arts 2, 6(2) (art 6(2) modified for the purposes of the security arrangements for the Channel Tunnel by SI 1993/1813; SI 2000/1775; SI 1994/1405). See also the Immigration Rules para 30C (added by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 9).

15 Immigration Rules para 25A (as added: see note 14 supra).

16 See the Immigration Rules para 30A(i) (para 30A added by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 31) para 2). There is no necessity for fraud. It is sufficient if the representation was inaccurate, was used for the purpose of obtaining entry clearance and played some part in the grant of the clearance: *Akhtar v Immigration Appeal Tribunal* [1991] Imm AR 326, CA; *Kaur v Secretary of State for the Home Department* [1998] Imm AR 1, CA (failure to disclose that sponsor's husband was in prison on remand on homicide charge). What is a material fact must be determined objectively: *R v Immigration Appeal Tribunal, ex p Suily Begum* [1990] Imm AR 226. Non-disclosure of an intention to work, whether deliberate or not, in an application for entry clearance as a student, constitutes a failure to disclose a material fact: *Marquez v Immigration Officer, Gatwick North* [1992] Imm AR 354.

A person who, on applying for entry, is silent as to material facts may be guilty of deception, rendering him an illegal entrant. However, there is no positive duty of candour on an entrant amounting to a requirement of utmost good faith: *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL (not following *Zamir v Secretary of State for the Home Department* [1980] AC 930, [1980] 2 All ER 768, HL). As to deception by conduct see *Akinde v Secretary of State for the Home Department* [1993] Imm AR 512, CA; *Al-Zahrany v Secretary of State for the Home Department* [1995] Imm AR 510, CA; *R v Secretary of State for the Home Department, ex p Awan* [1996] Imm AR 354; *R v Secretary of State for the Home Department, ex p Kuteesa* [1997] Imm AR 194. Failure to disclose a change of circumstances is not necessarily deception; the Secretary of State must prove a fraudulent misrepresentation of what was known to be a material fact: *R v Secretary of State for the Home Department, ex p Doldur* [1998] Imm AR 352, CA. The grant of a re-entry visa does not estop the immigration officer from refusing leave to enter where the visa was obtained by deception: *R v Immigration Appeal Tribunal, ex p Patel* [1988] AC 910, [1988] 2 All ER 378, [1988] Imm AR 434, HL.

17 If other than a change of circumstances amounting solely to the holder's attaining an age exceeding that under which he could in accordance with Immigration Rules paras 296-316 (see paras 121 et seq post) enter as the child of a person present and settled or being admitted for settlement in the United Kingdom.

18 See the Immigration Rules para 30A(ii) (as added: see note 16 supra). Examples of such a change of circumstances include marriage by a person with entry clearance as a dependent child, or the death of a sponsor: see *R v Immigration Appeal Tribunal, ex p Suily Begum* [1990] Imm AR 226; *R v Secretary of State for the Home Department, ex p Angur Begum* [1989] Imm AR 302, QBD.

19 See the Immigration Rules para 30A(iii) (as added: see note 16 supra).

20 An entry clearance is no longer current once it is presented and a refusal of leave to enter is noted: *Ashraf v Immigration Appeal Tribunal* [1989] Imm AR 234, CA.

21 See the Immigration Rules para 321.

22 See the Immigration Rules para 321(iii); and para 129 note 1 post.

23 See the Immigration Rules para 321A(1) (para 321A added by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 15).

24 See the Immigration Rules para 321A(2) (as added: see note 23 supra).

25 See the Immigration Rules para 321A(3) (as added: see note 23 supra). This ground does not apply where the person is settled in the United Kingdom or where there are strong compassionate circumstances justifying admission: Immigration Rules para 321A(3) (as so added).

For the purposes of the Immigration Rules, 'settled in the United Kingdom' means that the person concerned is free from any restriction on the period for which he may remain save that a person entitled to an exemption under the Immigration Act 1971 s 8 (as amended) (otherwise than as a member of the home forces) is not to be regarded as settled in the United Kingdom except in so far as s 8(5A) (as added) so provides (see para 88 ante), and is either ordinarily resident in the United Kingdom without having entered or remained in breach of the immigration laws or, despite having entered or remained in breach of the immigration laws, has subsequently entered lawfully or has been granted leave to remain and is ordinarily resident: Immigration Rules para 6. For the meaning of 'immigration laws' see para 26 note 9 ante.

26 See the Immigration Rules para 321A(4), (5) (as added: see note 23 supra). The provisions of the Immigration Rules para 321A(4), (5) (as added) apply both where the Secretary of State has personally directed that the person's exclusion is conducive to the public good and where, from information available to the immigration officer or the Secretary of State, it seems desirable to cancel leave on that ground, eg in the light of the person's character, conduct or associations: Immigration Rules para 321A(4), (5) (as so added).

27 Ie including documents, copy documents and medical reports.

28 See the Immigration Rules para 321A(6) (as added: see note 23 supra).

29 Immigration Act 1971 s 8B (added by the Immigration and Asylum Act 1999 s 8). See also para 86 ante.

30 At the date at which this volume states the law no day had been appointed under the Immigration and Asylum Act 1999 s 170(4) for the coming into force of ss 16, 17.

31 'Security' means the deposit of a sum of money, or the provision of a financial guarantee of a kind specified by the Immigration Rules, by the applicant, his agent or any other person, with a view to securing that the applicant will, if given leave to enter the United Kingdom for a limited period, leave the United Kingdom at the end of that period: Immigration and Asylum Act 1999 s 16(3), (7) (not yet in force: see note 30 supra).

32 Ibid s 16(1), (7) (not yet in force: see note 30 supra).

33 Ibid s 16(2)(a), (7) (not yet in force: see note 30 supra). In determining whether to give clearance, account may be taken of any security so provided: s 16(2)(b).

34 Ibid s 17(1), (2) (not yet in force: see note 30 supra).

35 Ibid ss 16(4)(a), 17(3)(a) (not yet in force: see note 30 supra).

36 Ibid ss 16(4)(b), 17(3)(b) (not yet in force: see note 30 supra). No security may be forfeited or otherwise realised unless the person providing it has been given an opportunity, in accordance with the Immigration Rules, to make representations to the Secretary of State: ss 16(5), 17(4) (not yet in force: see note 30 supra). Any security forfeited or otherwise realised by the Secretary of State must be paid into the Consolidated Fund: ss 16(8), 17(6) (not yet in force: see note 30 supra). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

UPDATE

93-98 General Requirements

For provision relating to the supply of revenue and customs information see PARA 142B.

96 Entry clearance and leave to enter

TEXT AND NOTES--The Secretary of State may by regulations (1) require an immigration application to be accompanied by specified information about external physical characteristics of the applicant; (2) enable an authorised person to require an individual who makes an immigration application to provide information about his external physical characteristics; (3) enable an authorised person to require an entrant to provide information about his external physical characteristics: Nationality, Immigration and Asylum Act 2002 s 126(1). The Secretary of State may operate a scheme for the voluntary provision by individuals of information relating to external physical characteristics in connection with entry to the United Kingdom: see s 127. 'Immigration application' means an application for entry clearance, leave to enter or

remain in the United Kingdom, or variation of leave to enter or remain in the United Kingdom: s 126(2). 'Authorised person' has the meaning given by the Immigration and Asylum Act 1999 s 141(5); 'entrant' has the meaning given by the Immigration Act 1971 s 33(1); 'entry clearance' has the meaning given by s 33(1); and 'external physical characteristics' includes, in particular, features of the iris or any other part of the eye: 2002 Act s 126(6). In exercise of these powers, the Secretary of State has made the Immigration (Provision of Physical Data) Regulations 2006, SI 2006/1743.

TEXT AND NOTES 3-8--Immigration Rules para 24 substituted: Statement of Changes in Immigration Rules (HC Paper (2005-06) no 645) para 4.

NOTE 3--Bulgaria, Republic of Croatia, Maldives, Mauritius, Papua New Guinea, Romania, Slovak Republic, Taiwan omitted, Bolivia, Jamaica, Lesotho, Malawi, South Africa, Taiwan (except those nationals or citizens of Taiwan who hold a passport issued by Taiwan that includes the number of the identification card issued by the competent authority in Taiwan in it), Venezuela (except those nationals or citizens of Venezuela that contains biometric information in an electronic chip), Swaziland, Zimbabwe added: Immigration Rules Appendix 1 para 1(a) (amended by Statement of Changes in Immigration Rules (HC Paper (2001-02) no 1301); Statement of Changes in Immigration Rules (HC Paper (2002-03) no 104) para 5(a); Statement of Changes in Immigration Rules (HC Paper (2002-03) no 180); Statement of Changes in Immigration Rules (HC Paper (2003-04) no 95) para 4); Statement of Changes in Immigration Rules (HC Paper 2005-06) no 949) paras 1, 3; Statement of Changes in Immigration Rules (HC Paper (2006-07) no 130) para 5; Statement of Changes in Immigration Rules (HC Paper (2008-09) no 227) paras 1, 2; Statement of Changes in Immigration Rules (HC Paper (2008-09) no 413) paras 1-5).

Those who arrive in the United Kingdom with leave to enter which is in force but which was given before arrival so long as they arrive within the period of their earlier leave and for the same purpose as that for which leave was granted, unless that leave was for a period of six months or less, or was extended by statutory instrument or by the Immigration Act 1971 s 3C (see PARA 175) are also excepted from the visa requirement: Immigration Rules Appendix 1 para 2(f) (added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 104) para 5(c)).

TEXT AND NOTE 4--Immigration Rules Appendix 1 para 2(c) deleted: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 389).

NOTE 5--Reference to persons holding refugee travel documents omitted: Immigration Rules Appendix 1 para 2 (amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 389). For 'by statutory instrument' read 'by statutory instrument or by the Immigration Act 1971 s 3C': Immigration Rules Appendix 1 para 2 (amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 104) para 5(b)).

NOTE 7--Head (9). Immigration Rules para 216 deleted: Statement of Changes in Immigration Rules (HC Paper (2006-07) no 130) para 2. Heads (15), (18). References to spouse are now to spouse or civil partner and references to unmarried partner are now to unmarried or same-sex partner: Immigration Rules paras 196, 242, 273, 283, 292, 295C, 295L (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) paras 11, 13, 17, 24, 26, 27). Head (15). Immigration Rules para 199 amended: Statement of Changes in Immigration Rules (Cm 5829) (2003) para 12.

In the definition of 'parent' the reference to stepfather or stepmother includes a relationship arising through civil partnership (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 2): Immigration Rules para 6 (definition amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 1(b)).

NOTE 8--SI 1999/3132 now replaced by Consular Fees Order 2009, SI 2009/700. Immigration Rules para 24 amended: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 1224) para 3). Immigration Rules paras 28, 29 amended, para 28A (application for entry clearance as a Tier 5 (Temporary Worker) Migrant in creative and sporting sub-category of Tier 5) added: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) paras 2, 3. For regulations made under the 1971 Act s 31A, see now Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2007, SI 2007/882 (amended by SI 2007/1122).

NOTE 12--SI 2000/1161 arts 1(3), 4(1) amended, art 4(2A), (2B) added: see SI 2005/1159; and PARA 99 TEXT AND NOTE 13. The reference is now to any form of entry clearance to which art 4(3) applies: art 4(3) (amended by SI 2005/1159). SI 2000/1161 art 4(3) applies to (1) a visit visa, other than a visit visa granted pursuant to the ADS Agreement with China (see PARA 99), indorsed with a statement that it is to have effect as a single-entry visa; (2) a visit visa granted pursuant to the ADS Agreement with China unless indorsed with a statement to the effect that it is to have effect as a dual entry visa; and (3) any other form of clearance: art 4(3A) (added by SI 2005/1159).

NOTE 14--An entry clearance does not have effect as leave to enter if it is indorsed on a convention travel document on or after 27 February 2004: SI 2000/1161 art 3 (amended by SI 2004/475). 'Convention travel document' means a travel document issued pursuant to the Convention relating to the Status of Refugees art 28 and its Protocol, except where that travel document was issued by the United Kingdom government: SI 2000/1161 art 1(3) (definition added by SI 2004/475).

NOTE 24--Immigration Rules para 321A(2) substituted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 36.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/A. GENERAL REQUIREMENTS/97. Registration with the police.

97. Registration with the police.

Limited leave to enter or remain in the United Kingdom¹ may be granted to a non-British citizen² subject to a condition requiring registration with the police³. The Secretary of State⁴ has power to make regulations as to the effect of such a condition⁵, and the regulations thus made⁶ apply to aliens⁷ with limited leave to enter or remain which is for the time being subject to such a condition and to aliens who are treated as having such a limited leave⁸.

Within seven days of the regulations becoming applicable to him an alien must, if he has not already done so during a previous period of ordinary residence in the United Kingdom, attend at the office of the appropriate registration officer⁹ and furnish to that officer such information, documents and other particulars (including a recent photograph¹⁰) as the officer may require for the purposes of the local register kept by him¹¹ or the issue of a certificate of registration¹² to the alien, and in particular must produce a passport furnished with a photograph of himself or some other document satisfactorily establishing his identity or nationality or give a satisfactory explanation of the circumstances preventing him from doing so¹³. Material changes to an alien's particulars must also be notified to the appropriate registration officer¹⁴. On registration each alien is issued with a certificate of registration¹⁵, and any immigration officer or constable may require an alien who is liable to register to produce his certificate or give a satisfactory reason for his failure to do so¹⁶.

A condition requiring registration with the police is normally imposed on any relevant foreign national¹⁷ who is given limited leave to enter the United Kingdom for longer than six months either for the purposes of employment¹⁸ or as a student, au pair, businessman, self-employed person, investor, person of independent means or creative artist¹⁹, or who is given limited leave to enter as the spouse or child of a person required to register with the police²⁰. A registration condition is also normally imposed on a relevant foreign national on whom a registration requirement was not imposed on arrival who is granted an extension of stay which has the effect of allowing him to remain in the United Kingdom for longer than six months²¹, and on any foreign national aged 16 or over who is given limited leave to enter the United Kingdom where, exceptionally, the immigration officer considers it necessary to ensure that he complies with the terms of the leave²².

Failure to comply, without reasonable excuse, with any of the registration requirements (including notification of change of circumstances) when so required is a criminal offence²³. The offence is a continuing one which applies until the end of the alien's period of limited leave, after which date the regulations cease to apply²⁴.

EEA nationals are exempt from the registration requirement, and members of their families in the United Kingdom in that capacity do not fall within the category of persons who are normally required to register²⁵.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to British citizens see paras 8, 23-43 ante.

3 See the Immigration Act 1971 s 3(1)(c) (s 3(1) amended by the British Nationality Act 1981 s 39(6), Sch 4 paras 2, 4; and the Immigration Act 1971 s 3(1)(c) substituted by the Immigration and Asylum Act 1996 s 12(1), Sch 2 para 1(1)).

4 As to the Secretary of State see para 2 ante.

5 Immigration Act 1971 s 4(3). The regulations may include provision as to the officers of police by whom registers are to be maintained, the form and content of the registers, the place and manner of registration, the documents and information to be furnished either on registration or on any change of circumstances, the issue of certificates of registration, and the payment of fees for certificates of registration, and may require any person who is for the time being subject to a registration condition to produce a certificate of registration to such persons and in such circumstances as may be prescribed by the regulations: s 4(3)(a)-(c). The regulations are made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 4(3).

6 I.e. the Immigration (Registration with Police) Regulations 1972, SI 1972/1758 (as amended).

7 For the meaning of 'alien' see para 13 ante; definition applied by *ibid* reg 2(1) (amended by SI 1982/1024).

8 Immigration (Registration with Police) Regulations 1972, SI 1972/1758, reg 3. An alien may be treated as having limited leave subject to such a condition by virtue of the Immigration Act 1971 s 34(3), or Sch 4 para 1 (see para 94 ante).

9 For these purposes, the chief officer of police for each police area is the registration officer for that area; the police area is the registration area; and the appropriate registration officer is the registration officer for the area in which the alien's residence is situated, if he has a residence in the United Kingdom, or, where he has no such residence, the area in which the alien happens for the time being to be: Immigration (Registration with Police) Regulations 1972, SI 1972/1758, reg 4(1). 'Residence' means a person's private dwelling-house or other premises in which he is ordinarily resident but does not include any premises in which he is not ordinarily resident: reg 2(1). The duties of a registration officer may be performed by any constable or other person authorised by that officer for that purpose: reg 4(3).

10 Two copies of the photograph must be supplied, and if the alien cannot supply them, the officer may cause him to be photographed: *ibid* reg 9(1).

11 Every registration officer is required to keep for his registration district a local register of aliens containing particulars of each alien's full name, sex, matrimonial status, date and country of birth, present and previous nationality (including date and means of acquisition), passport or other document establishing

nationality, business, profession or occupation, United Kingdom residence or address (if no residence), last residence outside the United Kingdom, referee (including name and address), date, place and mode of arrival in the United Kingdom, leave duration, conditions and restrictions, employment details or business or professional address, signature (or fingerprints if unable to write English), and photograph, provided that if a registration officer is not satisfied as to the nationality of an alien he may describe that alien in the local register as being of uncertain nationality or may describe him as having such nationality as appears to that officer to be the probable nationality of the alien: *ibid* reg 4(2), Schedule. 'Nationality' includes the status of a stateless alien: reg 2(1). An alien who has no residence in the United Kingdom may give the name and address of a person resident in the United Kingdom willing to act as a referee, and, if the officer considers him suitable, the referee's name and address is entered in the register: reg 7(6).

12 See the text and note 15 *infra*.

13 Immigration (Registration with Police) Regulations 1972, SI 1972/1758, regs 5, 6.

14 *Ibid* reg 7. A registered alien who for the time being has a residence in the United Kingdom must, if he adopts a new residence within the United Kingdom, report his arrival at his new residence to the appropriate registration officer before the expiration of the period of seven days beginning with the day of his arrival: reg 7(1), (2). A registered alien for the time being having a residence in the United Kingdom who is absent from his residence for a continuous period exceeding two months without adopting a new residence must forthwith notify the appropriate registration officer of his address for the time being (whether within or outside the United Kingdom), must notify the appropriate registration officer of any subsequent change of address within the United Kingdom before the expiration of eight days beginning with the day of his arrival at the new address (if he remains or intends to remain there for a longer period than seven days beginning with the day of his arrival), and must, on returning to his residence, notify the appropriate registration officer of his return, whether or not he has throughout the period of absence remained in the United Kingdom: reg 7(3), (5). A registered alien who for the time being does not have a residence in the United Kingdom and who moves from one address to another must notify the appropriate registration officer of his arrival there before the expiration of eight days beginning with the day of his arrival, unless either he does not remain or intend to remain there for a longer period than seven days beginning with the day of his arrival, or he has given the name and address of a suitable person resident in the United Kingdom willing to act as a referee in accordance with reg 7(6) (see note 11 *supra*). In the latter case, the alien need not notify the registration officer of his arrival at the new address provided he keeps the referee informed as to his address from time to time and notifies the registration officer of any change in the referee's address and the referee, if so required by the registration officer, furnishes to that officer any information in his possession as to the alien which is required by that officer for the purposes of his duties: reg 7(4)-(6).

Every alien who has furnished particulars under reg 5 (see the text and notes 9-13 *supra*) must notify the appropriate registration officer of any change in his name, matrimonial status, nationality, passport or other document establishing nationality, business, profession or occupation, employment details or business or professional address (reg 8(a), Schedule) and, if so required by the appropriate registration officer, must furnish to that officer by such date as he may specify such information, documents and other particulars (including, where so required, a recent photograph) as are required by that officer for the purposes of his duties (reg 8(b)).

Changes in name, address, residence, matrimonial status, nationality, passport or other document establishing nationality, business, profession or occupation, employment details or business or professional address may be notified by personal attendance at the registration office or by written notice by post accompanied by the alien's certificate of registration: reg 9(2). Where a photograph is required to be furnished two copies of the photograph must be supplied, and if the alien cannot supply them, the officer may cause him to be photographed: reg 9(1). Aliens required to furnish information or documents in pursuance of reg 8(b) may be required to attend for that purpose at the office of the registration officer: reg 9(3).

15 *Ibid* reg 10(1) (reg 10 substituted by SI 1990/400). An alien to whom a certificate of registration is issued must pay to the registration officer concerned a fee of £34, except where the requirement to register is a condition of leave granted to an alien after an absence from the United Kingdom of a period of less than one year immediately following an earlier period of leave which was subject to the same condition: Immigration (Registration with Police) Regulations 1972, SI 1972/1758, reg 10(3) (as so substituted; and amended by SI 1995/2928). A certificate of registration is independent of, and not to be included in, any other document: Immigration (Registration with Police) Regulations 1972, SI 1972/1758, reg 10(2) (as so substituted).

16 *Ibid* reg 11(2)(a). An alien who fails to produce his certificate, whether or not he gives a satisfactory reason, may be required to produce his certificate at a particular police station within 48 hours: reg 11(2)(b). The alien may also be required to produce his certificate on the making of any alteration or addition to the register: reg 11(1). An alien who fails to comply with these requirements within the specified period continues to be subject to the requirements after the expiry of the period (reg 2(3)), and may also be liable to a penalty (see para 201 *post*).

17 For these purposes, a 'relevant foreign national' is a person aged 16 or over who is either a stateless person, a person holding a non-national travel document, or a national or citizen of Afghanistan, Algeria,

Argentina, Armenia, Azerbaijan, Bahrain, Belarus, Bolivia, Bhutan, Brazil, China, Colombia, Cuba, Egypt, Georgia, Iran, Iraq, Israel, Jordan, Kazakhstan, Kirgizstan, Kuwait, Lebanon, Libya, Moldova, Morocco, North Korea, Oman, Palestine, Peru, Qatar, Russia, Saudi Arabia, Sudan, Syria, Tajikistan, Tunisia, Turkey, Turkmenistan, United Arab Emirates, Ukraine, Uzbekistan or Yemen: Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 324A, Appendix 2 (Immigration Rules paras 324A, 325, 326, Appendix 2 substituted by Statement of Changes in Immigration Rules (Cm 3953) (1998) paras 4, 5).

18 Immigration Rules para 325(1)(i) (as substituted: see note 17 supra). This requirement applies unless the entrant has been admitted permit-free as a seasonal worker at an agricultural camp, a minister of religion, a missionary, a member of a religious order, or a private servant in a diplomatic household (see para 112 post). As to the meaning of 'employment' see para 93 note 35 ante.

19 Immigration Rules para 325(1)(ii) (as substituted: see note 17 supra). See paras 102, 108, 113, 115, 118 post.

20 Immigration Rules para 325(1)(iii) (as substituted: see note 17 supra).

21 Immigration Rules para 326 (as substituted: see note 17 supra). The six-month period is reckoned from the date of arrival. A registration condition is not imposed where the extension of stay was granted to a person: (1) as a private servant in a diplomatic household; (2) as a minister of religion, missionary or member of a religious order; (3) on the basis of marriage to a person settled in the United Kingdom; or (4) following the grant of asylum: Immigration Rules para 326.

22 Immigration Rules para 325(2) (as substituted: see note 17 supra).

23 See the Immigration Act 1971 s 26(1)(f). As to penalties see para 201 post. Where an alien has failed to comply with any requirement made by the Immigration (Registration with Police) Regulations 1972, SI 1972/1758 (as amended) within the specified period, he continues to be subject to that requirement notwithstanding the expiry of that period (without prejudice to any liability in respect of that failure under the Immigration Act 1971 s 26(1)(f)): Immigration (Registration with Police) Regulations 1972, SI 1972/1758, reg 2(3).

24 *R v Naik* (1978) Times, 26 July, CA. Offences against the regulations committed prior to the date of expiry of leave may still be prosecuted within the six-month time limit.

25 See Case 157/79 *R v Pieck* [1981] QB 571, [1981] 3 All ER 46, [1981] 2 WLR 960, ECJ. As to EEA nationals see para 225 et seq post. For the meaning of 'EEA national' see para 227 post.

UPDATE

93-98 General Requirements

For provision relating to the supply of revenue and customs information see PARA 142B.

97 Registration with the police

NOTE 3--1971 Act s 3(1)(c) amended: UK Borders Act 2007 s 16, Schedule; Borders, Citizenship and Immigration Act 2009 s 50(1).

TEXT AND NOTES 17-22--Immigration Rules para 325 now as substituted by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 194) para 2).

TEXT AND NOTES 17-20--These provisions also apply to any relevant foreign national given limited leave to enter under the Science and Engineering Graduates Scheme (see PARA 102): Immigration Rules para 325(1)(ii (amended by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 20(b)).

NOTE 17--Immigration Rules para 324A deleted: Statement of Changes in Immigration Rules (HC Paper (2004-05) no 194) para 1.

NOTE 18--The reference to a seasonal worker at an agricultural camp is now to a seasonal agricultural worker: Immigration Rules para 325(1)(i) (amended by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 20(a)).

TEXT AND NOTE 20--Reference to spouse is now to spouse or civil partner: Immigration Rules para 326 (substituted by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 194) para 2; and amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 552) para 35; and Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 101).

NOTE 21--Now, head (3) on the basis of marriage to or civil partnership with a person settled in the United Kingdom or as the unmarried or same-sex partner of a person settled in the United Kingdom; and also heads (5) as a seasonal agricultural worker; (6) as a person exercising access rights to a child resident in the United Kingdom; (7) as the parent of a child at school: Immigration Rules para 326 (see TEXT AND NOTE 20).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/A. GENERAL REQUIREMENTS/98. Registration at hotels and hotel records.

98. Registration at hotels and hotel records.

The Secretary of State¹ may, for immigration purposes, by order make provision for records to be made and kept of persons staying at hotels², and for persons who stay at any such premises to supply the necessary information³. In pursuance of this power the Secretary of State has ordered that every person aged 16 or over who stays⁴ at any hotel or other accommodation⁵ must on arrival inform the keeper⁶ of the premises of his full name and nationality⁷. Where the person is an alien he must on arrival also inform the keeper of the premises of the number and place of issue of his passport, certificate of registration⁸ or other document establishing his identity and nationality, and on or before his departure inform the keeper of the premises of his next destination and, if it is known to him, his full address there⁹. Keepers of hotels and other premises must require all persons aged 16 or over who stay there to comply with these obligations, and must keep a record in writing of the date of arrival of, and the information given by, each such person for at least 12 months¹⁰. Failure to comply, without reasonable excuse, with any of the notification requirements when so required is a criminal offence¹¹.

1 As to the Secretary of State see para 2 ante.

2 The scope of such orders extends to any hotel or other premises, whether furnished or unfurnished, where lodging or sleeping accommodation is provided for reward, not being premises certified by the chief officer of police of the area as occupied for the purposes of a school, hospital, club or other institution or association: see the Immigration Act 1971 s 4(4) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2); and the Immigration (Hotel Records) Order 1972, SI 1972/1689, art 3.

3 Immigration Act 1971 s 4(4) (as amended: see note 2 supra). The requirement to supply information is applicable to all persons whether British citizens or not: s 4(4) (as so amended). Orders under s 4(4) (as amended) are made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 4(4) (as so amended).

4 'Stays' means lodges or sleeps, for one night or more, in accommodation provided for reward: Immigration (Hotel Records) Order 1972, SI 1972/1689, art 2(1).

5 See note 2 supra.

6 'Keeper', in relation to any premises, includes any person who for reward receives any other person to stay in the premises, whether on his own behalf or as manager or otherwise on behalf of any other person: Immigration (Hotel Records) Order 1972, SI 1972/1689, art 2(1).

Any information required under these provisions to be given by or to any person may be given by or to any other person acting on his behalf: art 2(3).

7 Ibid art 4(1). 'Nationality' includes the status of a stateless alien: art 2(1). For the meaning of 'alien' see para 13 ante; definition applied by art 2(1) (amended by SI 1982/1025).

8 See para 97 ante.

9 Immigration (Hotel Records) Order 1972, SI 1972/1689, art 4(2).

10 Ibid art 5. The record is to be open to inspection at all times by any constable or person authorised by the Secretary of State: art 5.

11 See the Immigration Act 1971 s 26(1)(f). As to penalties see para 201 post.

UPDATE

93-98 General Requirements

For provision relating to the supply of revenue and customs information see PARA 142B.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/B. ADMISSION OF PERSONS FOR TEMPORARY PURPOSES/99. Visitors.

B. ADMISSION OF PERSONS FOR TEMPORARY PURPOSES

99. Visitors.

Any person seeking entry as a visitor¹, including one coming to stay with relatives or friends, is to be admitted if he satisfies the immigration officer: (1) that he is genuinely seeking entry² for the limited period of the visit as stated by him³; (2) that he intends to leave the United Kingdom at the end of the period of the visit as stated by him⁴; (3) that whilst in the United Kingdom he does not intend to take employment⁵, produce or sell goods or services⁶, or study at a maintained school⁷; (4) that, for the stated period, he will maintain and accommodate himself and any dependants without recourse to employment or public funds⁸, or will, with any dependants, be maintained and accommodated adequately by relatives or friends⁹; and (5) that he can meet the cost of the return or onward journey¹⁰. However, in all cases leave to enter must be refused if the immigration officer is not satisfied that each of these requirements is met¹¹. Where leave to enter is granted its maximum duration is six months, and the leave is subject to a condition prohibiting employment¹². A visit visa operates as leave to enter on each occasion on which the holder enters the United Kingdom during the period of its validity¹³.

Visitors may be admitted for private medical treatment at their own expense¹⁴ provided that, in the case of a person suffering from a communicable disease, the medical inspector is satisfied that there is no danger to public health¹⁵. However, the immigration officer must be satisfied that the ordinary requirements¹⁶ are met¹⁷. The visitor may be required to show with satisfactory evidence that the proposed course of treatment is of finite duration¹⁸ and must establish that he intends to leave at the end of his treatment¹⁹. The immigration officer may also inquire into the cost of treatment in deciding whether the visitor's means would be adequate to cover those costs²⁰, and the visitor may be asked to produce evidence that the

medical condition requires consultation or treatment, that satisfactory arrangements have been made for the consultation or treatment at the visitor's own expense, and as to the likely duration of the visit²¹. The maximum period of leave is six months, subject to a condition prohibiting employment, and leave is to be refused if a person cannot meet the requirements²².

Where a visitor who has been admitted for a stay of less than six months wishes to extend his visit, an extension of stay may be granted, subject to a condition prohibiting employment, provided that the ordinary requirements²³ are met, and the visitor has not already spent, or would not as a result of an extension of stay spend, more than six months in total in the United Kingdom as a visitor²⁴.

Where a visitor applies for an extension of stay to undergo or continue private medical treatment, he: (a) must satisfy the immigration officer that the ordinary requirements²⁵ are met²⁶; (b) must produce evidence from a registered medical practitioner²⁷ of satisfactory arrangements for private medical consultation or treatment and its likely duration and, where treatment has already begun, evidence as to its progress²⁸; (c) must show that he has met, out of the resources available to him, any costs and expenses incurred in relation to his treatment in the United Kingdom²⁹; and (d) must have sufficient funds available to him in the United Kingdom to meet the likely costs of the treatment, and intend to meet those costs³⁰. If the Secretary of State is satisfied that each of these requirements is met, an extension is normally granted, with a prohibition on employment³¹; however, an extension must be refused if the Secretary of State is not so satisfied³².

The ability of visitors to remain in some other capacity has been greatly curtailed and any such application is generally refused³³. Visitors who are not visa nationals³⁴ may change to student or prospective student³⁵ or student nurse³⁶ status. Commonwealth citizens³⁷ with United Kingdom grandparents may stay to seek and take employment³⁸. Visitors may apply for leave to remain as the spouse³⁹, unmarried partner⁴⁰ or dependent relative⁴¹ of a person settled in the United Kingdom. Visitors may apply for asylum or for exceptional leave to remain outside the Immigration Rules.

Visitors in transit who are not crew members may also be granted leave to enter for up to 48 hours provided they have the means, intention and ability to proceed at once to another country⁴².

1 For these purposes, a visitor includes a person living and working outside the United Kingdom who comes to the United Kingdom to transact business (such as attending meetings or briefings, fact-finding, negotiating or making contracts to buy or sell goods and services): Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 40. For a list of typical business visit activities see the *Immigration Directorates' Instructions* Chapter 2 (Visitors) Section 1 Annex B paragraph 4 (July 2001); and see also *R v Secretary of State for the Home Department, ex p Ayoola* [1992] Imm AR 170, CA, where the distinction between 'transacting' and 'engaging in' business was considered (becoming a director of a United Kingdom incorporated company went beyond transacting business). Forming a company, establishing an office and training a partner have been held to go beyond transacting business: *Hossain v Immigration Officer, Heathrow* [1990] Imm AR 520, IAT. Visitors wishing to establish themselves in business or self-employment must comply with the Immigration Rules governing businessmen and self-employed persons (see the Immigration Rules paras 200-201). See also *R v Secretary of State for the Home Department, ex p Ayoola* supra.

All visa nationals require a visa to enter as a visitor and other temporary purposes. See further para 96 note 3 ante. As to special classes of visitor (eg academic visitors, business visitors, persons travelling to the United Kingdom for job interviews, persons visiting the United Kingdom in order to apply for visas for settlement in third countries, volunteers on archaeological excavations, temporary childminders for close relatives, carers of sick relatives, court reporters, doctors coming for Professional and Linguistic Assessment Board tests, entertainers and sportspersons, and persons travelling to the United Kingdom for the purpose of marriage) see the *Immigration Directorates' Instructions* (November 2000) Chapter 2 (Visitors) Section 1 Annex B (July 2001).

A visit is a temporary stay in the United Kingdom for any purpose which does not place the person in a different category of the Immigration Rules: *Secretary of State for the Home Department v Yi Fan Xu* [1993] Imm AR 519 (application to visit spouse who was a student in the United Kingdom not outside visitor category); *Kelada v Secretary of State for the Home Department* [1991] Imm AR 400, IAT (application to stay as visitor while children educated in the United Kingdom did not put the applicant outside the visitor category). Consequently a person may seek leave to enter as a visitor for a variety of purposes, such as to attend and give evidence at an

appeal against refusal of entry as a spouse (*Patel v Visa Officer, Bombay* [1991] Imm AR 97 (but in this case refusal was justified in light of the appellant's immigration history)), to take over domestic responsibilities for a short while for genuine family reasons (*Manjit Kaur v Entry Clearance Officer, New Delhi* (15 September 2000, unreported), IAT), to look after a child of a close relative temporarily (*Entry Clearance Officer, Manila v Magalso* [1993] Imm AR 293 (although not if the purpose of the looking after is to enable the parents to take up gainful employment)), to visit others who are temporarily resident in the United Kingdom (*Secretary of State for the Home Department v Yi Fan Xu* supra). See also *Mendoza v Secretary of State for the Home Department* [1992] Imm AR 122 (application under the domestic servant concession is outside the Immigration Rules relating to visitors). See further the *Immigration Directorates' Instructions* Chapter 17 (Employment outside the Rules) Section 2 (June 2001).

2 Deciding whether a genuine visit is intended is a question of fact, but relevant factors include the person's immigration history and status: *Patel v Entry Clearance Officer, Bombay* [1978] Imm AR 154 (possession of a non-patrial United Kingdom passport was a relevant consideration and the applicant had been properly refused a visit); and see *Patel v Visa Officer, Bombay* [1991] Imm AR 97. But see also *Mohammed Din v Entry Clearance Officer, Karachi* [1978] Imm AR 56 (possession of non-patrial United Kingdom passport not a relevant consideration unless bad faith was indicated). Patterns of family immigration may be relevant (*R v Secretary of State for the Home Department, ex p Kurumoorthy* [1998] Imm AR 401), but not where migration was as a result of being forced to flee persecution (*R v Entry Clearance Officer, Istanbul, ex p Edebali* (21 October 1997, unreported), QBD (refusal to grant visit visa to parents of adult children who had either been granted refugee status or had outstanding applications for asylum quashed)). The length and purpose of the visit and whether it bears a reasonable relationship with the person's means, family, social and economic background also require careful consideration: *Singh v Entry Clearance Officer, New Delhi* [1975] Imm AR 118, IAT.

3 Immigration Rules para 41(i). Whilst normally a person will need to specify with some clarity the length of the visit (*Hashim v Secretary of State for the Home Department* [1982] Imm AR 113 (application refused because length of proposed visit for medical treatment was too vague)), failure to identify a precise date for leaving, owing to the nature of the visit, is not in itself a reason for refusing leave to enter (*R v Secretary of State for the Home Department, ex p Arjumand* [1983] Imm AR 123 (period required depended on father's health and the winding up of his business)). An immigration officer is not entitled to refuse leave to enter as a visitor just because the applicant is highly likely to apply for an extension of stay, when he is entitled to do so: *R v Secretary of State for the Home Department, ex p Arjumand* supra; *R v Entry Clearance Officer, Istanbul, ex p Edebali* (21 October 1997, unreported), QBD.

4 Immigration Rules para 41(ii). An intention is to be distinguished from a wish, which only becomes an intention if there is a reasonable prospect of it being fulfilled: *Masood v Immigration Appeal Tribunal* [1992] Imm AR 69, CA; cf *R v Secretary of State for the Home Department, ex p Brakwah* [1989] Imm AR 366 (on the evidence, an immigration officer was entitled to conclude that the applicant who had sought and been granted entry as a visitor had formed an intention to study on entry which was not merely a wish). It is the intention in respect of the instant application which is relevant, and a previous expression of a wish to settle or study is not necessarily decisive against the applicant: cf *R v Secretary of State for the Home Department, ex p Arjumand* [1983] Imm AR 123. A person's incentives to return to the country he came from may be strong evidence indicating his intention to leave at the end of the visit: *Singh v Entry Clearance Officer, New Delhi* [1978] Imm AR 134 (widower with two sons in the United Kingdom should have been granted leave to enter in light of evidence of financial resources, property in India and rheumatoid arthritis making it difficult to live in a cold climate).

5 Immigration Rules para 41(iii). As to the meaning of 'employment' see para 93 note 35 ante.

6 Immigration Rules para 41(iv).

7 Immigration Rules para 41(v).

8 'Public funds' means housing provided by housing authorities, severe disablement allowance, invalid care allowance, disability living allowance, attendance allowance, income support, working families' tax credit, disabled person's tax credit, housing benefit, council tax benefit, social fund payments, child benefit, income-based jobseeker's allowance, and the equivalent benefits in Scotland and Northern Ireland: Immigration Rules para 6 (substituted by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 1(d)). As to the provision of housing by housing authorities see the Housing Act 1985 Pt II (ss 9-57) (as amended) and the Housing Act 1996 Pt VI (ss 159-174) (as amended) or Pt VII (ss 175-218) (as amended); and HOUSING vol 22 (2006 Reissue) paras 224 et seq, 240 et seq, 278 et seq. As to severe disablement allowance, invalid care allowance, disability living allowance and attendance allowance see the Social Security Contribution and Benefits Act 1992 Pt III (ss 63-79 (as amended); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 92 et seq. As to income support, working families' tax credit, disabled person's tax credit, housing benefit and council tax benefit see Pt VII (ss 123-137) (as amended); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 173 et seq. See also HOUSING vol 22 (2006 Reissue) para 140 et seq; RATING AND COUNCIL TAX vol 39(1B) (Reissue) para 371 et seq). Note that as from a day to be appointed working families' tax credit and disabled person's tax credit are abolished and replaced with a single working tax credit: see the Tax Credits Act 2002 s 1(3); and

SOCIAL SECURITY AND PENSIONS. As to social fund payments see Pt VIII (ss 138-140) (as amended); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 228 et seq. As to child benefit see Pt IX (ss 141-147) (as amended); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 237 et seq. As to income-based jobseeker's allowance see the Jobseekers Act 1995; and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 268 et seq.

For the purposes of the Immigration Rules, a person is not regarded as having (or potentially having) recourse to public funds merely because he is (or will be) reliant in whole or in part on public funds provided to his sponsor, unless, as a result of his presence in the United Kingdom, the sponsor is (or would be) entitled to increased or additional public funds: Immigration Rules para 6A (added by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 4). For example, education at a state-aided school is not recourse to public funds: *R v Immigration Appeal Tribunal, ex p Ved* (1981) Times, 14 May. A relative or friend of a visitor seeking entry may be asked to give an undertaking in writing to be responsible for the visitor's maintenance and accommodation for the period of his stay, including any variations; and any income support paid to meet the visitor's needs may be recoverable from such a relative or friend: see the Immigration Rules para 35. The Home Office may also seek to recover from a person giving such an undertaking amounts attributable to any support provided under the Immigration and Asylum Act 1999 s 95 (see para 246 post), and failure to maintain a person in accordance with such an undertaking may also be an offence under the Social Security Administration Act 1992 s 105 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 397 et seq) or the Immigration and Asylum Act 1999 s 108 (see para 254 post) if as a consequence asylum support or income support is provided in respect of that person: see the Immigration Rules para 35 (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 8). As to asylum support see para 245 et seq post.

9 Immigration Rules para 41(vi).

10 Immigration Rules para 41(vii).

11 Immigration Rules para 43.

12 See the Immigration Rules para 42.

13 Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 4(1). To operate as leave to enter, the visa or entry clearance must be endorsed with the conditions to which it is subject: art 3(3)(a). The holder is treated as having been granted six months' leave to enter from the date of arrival where six months or more remain of the period of validity, or leave for the period that remains, if that is period is less than six months: art 4(2).

14 This does not mean that the visitor must be personally responsible for the costs of the medical treatment, and the expenses can be met by third parties: *Foon* [1983] Imm AR 29.

15 See the Immigration Rules paras 40, 51(ii). Any person who mentions health or medical treatment as a reason for his visit, or who appears not to be in good mental or physical health, must be referred to the medical inspector on arrival, and the immigration officer has a discretion (to be exercised sparingly) to refer for medical examination in any other case: Immigration Rules para 36. An entry clearance officer has the same power to refer a person seeking entry clearance for medical examination: Immigration Rules para 39.

16 Ie the requirements set out in the Immigration Rules para 41 (see the text and notes 1-10 supra), excluding in this case the requirements as to genuinely seeking entry and intending to leave the United Kingdom at the end of the stated visit period: see the Immigration Rules para 51(i).

17 Immigration Rules para 51(i).

18 Immigration Rules para 51(iii).

19 Immigration Rules para 51(iv).

20 Immigration Rules para 51(v)(c), (e).

21 Immigration Rules para 51(v)(a), (b), (d).

22 Immigration Rules paras 52, 53.

23 Ie the requirements set out in the Immigration Rules para 41 (see the text and notes 1-10 supra), excluding in this case the requirement as to genuinely seeking entry for the specified period: see the Immigration Rules para 44(i).

24 See the Immigration Rules paras 44-46. Any period spent as a seasonal agricultural worker counts as a period spent as a visitor: Immigration Rules para 44. An application for an extension of leave as a visitor may implicitly be an application for a shorter period even if, on the face of the application, a longer period (in excess of the six months allowed) is sought, and whether it is to be treated as an application for a shorter (permitted)

period depends on the facts of each case and the Secretary of State must consider granting leave up to the six-month limit: *Wong v Secretary of State for the Home Department* [1995] Imm AR 451. This may not apply where the period of leave sought is related to a specific future event which will occur only on a date after the time allowed by the Immigration Rules para 42: *Secretary of State for the Home Department v Riaz* [1987] Imm AR 88, IAT (application to remain in order to see the Christmas lights). Certain categories of visitor may apply for extensions that go beyond the six-month time limit in the Immigration Rules. For example, those caring for sick or disabled relatives who are given three months' leave in the first instance can apply for further periods of up to 12 months if medical and social services support the application.

25 le the requirements set out in the Immigration Rules paras 41, 51 (see the text and notes 1-10, 15-21 supra), excluding in this case the requirements as to genuinely seeking entry and intending to leave the United Kingdom at the end of the stated visit period: see the Immigration Rules para 54(i).

26 Immigration Rules para 54(i).

27 le a person who holds a National Health Service consultant post or who appears in the Specialist Register of the General Medical Council: Immigration Rules para 54(ii) (substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 9).

28 Immigration Rules para 54(ii) (as substituted: see note 27 supra).

29 Immigration Rules para 54(iii).

30 Immigration Rules para 54(iv).

31 Immigration Rules para 55.

32 Immigration Rules para 56. In this regard see *Foon v Secretary of State for the Home Department* [1983] Imm AR 29.

33 A visitor may not be granted leave to remain as a trainee (see the Immigration Rules para 119(i); and para 111 post), an au pair (see the Immigration Rules para 92(i); and para 108 post), or a working holidaymaker (see the Immigration Rules para 98(i); and para 101 post). A visitor may not remain for employment (see the Immigration Rules paras 139(i), 147(i), 155(i), 164(i), 173(i), 181(i); and para 112 post), as an investor (see the Immigration Rules para 227(i); and para 115 post), as a retired person of independent means (see the Immigration Rules para 266(i); and para 117 post), as a writer, composer or artist (see the Immigration Rules para 235(i); and para 118 post), or for business (see the Immigration Rules para 206(i); and para 113 post) unless he is a businessman from an European Community Association Agreement country whose nationals have rights of establishment in the United Kingdom (see the Immigration Rules paras 211-223 (as amended); and para 114 post).

34 As to visa nationals see para 96 ante.

35 See the Immigration Rules paras 60(i) (as substituted), 85(i) (as amended); and para 102 post.

36 See the Immigration Rules para 67(i) (as substituted); and para 103 post.

37 As to Commonwealth citizens see para 11 ante.

38 See the Immigration Rules para 189 (as amended); and para 112 post.

39 See the Immigration Rules para 284; and para 122 post.

40 See the Immigration Rules para 295D (as added); and para 123 post.

41 See the Immigration Rules paras 298, 306, 311, 317, 318 (paras 311, 317 as amended); and paras 132-133 post.

42 See para 95 ante.

UPDATE

99 Visitors

TEXT AND NOTES--Immigration Rules paras 40, 42-46 substituted, para 41 amended, by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) paras 22-27

so as to apply to general visitors. Immigration Rules paras 40, 42, 44, 46 amended: Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) paras 7, 9, 10, 19.

A general visitor seeking to enter the United Kingdom for the purpose of marriage or civil partnership may be admitted for a maximum period of six months, subject to a condition prohibiting employment, provided the immigration officer is satisfied that he (1) meets the requirements set out in the Immigration Rules para 41 for entry as a visitor; (2) can show that he intends to give notice of marriage or civil partnership, or marry or form a civil partnership, in the United Kingdom within the period for which entry is sought; (3) can produce satisfactory evidence, if required to do so, of the arrangements for giving notice of marriage or civil partnership, or for his wedding or civil partnership ceremony to take place, in the United Kingdom during the period for which entry is sought; and (4) holds a valid United Kingdom entry clearance for entry in this capacity: see the Immigration Rules paras 56D, 56E (paras 56D-56F added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 346 para 6; and amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 4; Immigration Rules para 56D amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 36; and Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) paras 21-23). Leave to enter is to be refused if the immigration officer is not satisfied that each of the requirements of heads (1)-(4) is not satisfied: Immigration Rules para 56F.

As to the requirements for leave to enter, or for an extension of stay, as a child visitor see Immigration Rules para 46A-46F (added by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 819) para 2; Immigration Rules para 46A substituted by Statement of Changes in Immigration Rules (HC Paper (2009-10) no 120) para 2; Immigration Rules para 46D amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) paras 29-31; Immigration Rules paras 46B, 46D amended by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) paras 11-16; and Statement of Changes in Immigration Rules (HC Paper (2009-10) no 120) paras 3-6).

As to the requirements for leave to enter, or for an extension of stay, as a business visitor see Immigration Rules paras 46G-46L (paras 46G-46X added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 32; Immigration Rules para 46G amended by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) paras 17, 18). As to such requirements in relation to a sports visitor see Immigration Rules paras 46M-46S; and as to such requirements in relation to an entertainer visitor see Immigration Rules paras 46T-46X.

As to the requirements for leave to enter as a visitor under the Approved Destination Status Agreement with China (see TEXT AND NOTE 13), see the Immigration Rules paras 56G-56J (added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 486) para 5; Immigration Rules para 56G amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 37).

As to the requirements for leave to enter as a student visitor see the Immigration Rules paras 56K-56M (added by Statement of Changes in Immigration Rules (Cm 7074) (2007) para 6; Immigration Rules para 56K amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 40) para 5; Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) paras 24, 25; and Statement of Changes in Immigration Rules (HC Paper (2009-10) no 120) para 7).

TEXT AND NOTES 1-10--Also, head (6) he is not a child under the age of 18: Immigration Rules para 41(viii) (added by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 819) para 1).

NOTE 3--Immigration Rules para 41(i) amended: Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 8.

TEXT AND NOTE 7--For 'study at a maintained school' read 'undertake a course of study': Immigration Rules para 41(v) (amended by Statement of Changes in Immigration Rules (Cm 7074) (2007) para 2).

NOTE 8--In the definition of 'public funds', the reference to invalid care allowance is now to carer's allowance, the references to working families' tax credit and disabled person's tax credit are replaced by references to child tax credit and working tax credit under the Tax Credits Act 2002 Pt 1 (ss 1-48) and the definition now includes state pension credit under the State Pension Credit Act 2002: Immigration Rules para 6 (amended by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 346) paras 1, 2).

Immigration Rules para 6A replaced by Immigration Rules paras 6A-6C (para 6B added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 346) para 4; Immigration Rules paras 6A-6C substituted by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 2).

TEXT AND NOTE 13--Now refers to a visit visa (other than a visit visa granted pursuant to the ADS Agreement with China) unless indorsed with a statement that it is to have effect as a single-entry visa: SI 2000/1161 art 4(1) (amended by SI 2005/1159). 'ADS Agreement with China' means the Memorandum of Understanding on visa and related issues concerning tourist groups from the People's Republic of China to the United Kingdom as an approved destination, signed on 21 January 2005: SI 2000/1161 art 1(3) (definition added by SI 2005/1159). A visit visa granted pursuant to the ADS Agreement with China and indorsed with a statement that it is to have effect as a dual-entry visa has effect as leave to enter the United Kingdom on two occasions during its period of validity, and on arrival in the United Kingdom on each occasion, the holder must be treated for the purposes of the Immigration Acts (see PARA 83 TEXT AND NOTE 13) as having been granted, before arrival, leave to enter the United Kingdom for a limited period beginning on the date on which the holder arrives in the United Kingdom and ending on the date of expiry of the entry clearance: SI 2000/1161 art 4(2A), (2B) (both added by SI 2005/1159).

NOTE 17--Immigration Rules para 51(i) amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 33.

TEXT AND NOTES 23, 24--The visitor must not have been last admitted to the United Kingdom under the Approved Destination Status Agreement with China (see TEXT AND NOTE 13): Immigration Rules para 44 (amended by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 486) para 2).

NOTE 23--Immigration Rules para 92 deleted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 39(d).

NOTE 24--Any periods spent as a seasonal agricultural worker and as a student visitor count as a period spent as a visitor: Immigration Rules para 44 (amended by Statement of Changes in Immigration Rules (Cm 7074) (2007) para 3).

TEXT AND NOTES 26-30--Also, head (e) was not last admitted to the United Kingdom under the Approved Destination Status Agreement with China (see TEXT AND NOTE 13): Immigration Rules para 54(v) (added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 486) para 3).

NOTE 26--Immigration Rules para 54(i) substituted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 34.

NOTE 33--Immigration Rules para 147 deleted: Statement of Changes in Immigration Rules (Cm 7701) (2009) para 5. See further PARA 112.

NOTE 35--Immigration Rules para 60 deleted: Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 27(a).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/B. ADMISSION OF PERSONS FOR TEMPORARY PURPOSES/100. Parents of a child at school.

100. Parents of a child at school.

Parents¹ of children under 12² attending independent fee-paying day schools³ and satisfying the relevant requirements⁴ may be granted 12 months' leave to enter or remain, subject to a condition prohibiting employment, if they satisfy the immigration officer⁵:

- 137 (1) that they intend to leave the United Kingdom at the end of the stated period of the visit⁶;
- 138 (2) that whilst in the United Kingdom they do not intend to take employment or produce or sell goods or services⁷; and
- 139 (3) that they have adequate and reliable funds for maintaining a second home in the United Kingdom and are not seeking to make the United Kingdom their main home⁸.

Leave to enter or remain may be given if the above requirements are met but must be refused if any of them is not⁹.

1 For the meaning of 'parent' see para 96 note 7 ante.

2 See Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 56A(iii) (paras 56A-56C added by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 10).

3 Immigration Rules para 56A(ii) (as added: see note 2 supra). As to independent schools generally see EDUCATION vol 15(1) (2006 Reissue) paras 465-509.

4 Immigration Rules para 56A(ii) (as added: see note 2 supra). The relevant requirements in this case are that the student in question: (1) has been accepted at an independent fee-paying school outside the maintained sector for a full-time course of study which meets the statutory requirements; (2) is able and intends to follow, and has enrolled on, that course; (3) intends to leave the United Kingdom at the end of his studies; (4) does not intend to engage in business or to take employment, except part-time or vacation work undertaken with the consent of the Secretary of State; and (5) is able to meet the costs of the course and accommodation and the maintenance of himself and any dependants without taking employment or engaging in business or having recourse to public funds: Immigration Rules para 57(i)(c), (ii)(c), (iii)-(vi). The statutory requirements referred to in head (1) supra are the requirements of the Education Act 1996, which replace those of the Education Act 1944: see EDUCATION vol 15(1) (2006 Reissue) para 1. As to the meaning of 'employment' see para 93 note 35 ante. For the meaning of 'public funds' see para 99 note 8 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante. As to the Secretary of State see para 2 ante.

5 In the case of an application for limited leave to remain, the Secretary of State must be satisfied as to the requirements set out in heads (1)-(3) in the text.

6 Immigration Rules paras 41(ii), 56A(i) (para 56A as added: see note 2 supra). See para 99 note 4 ante.

7 Immigration Rules paras 41(iii), (iv), 56A(i) (para 56A as added: see note 2 supra).

8 Immigration Rules paras 56A(iv), (v) (as added: see note 2 supra).

9 See the Immigration Rules paras 56B, 56C (both as added: see note 2 *supra*).

UPDATE

100 Parents of a child at school

TEXT AND NOTES 1-8--Also, head (4) that they were not last admitted to the United Kingdom under the Approved Destination Status Agreement with China (see PARA 99): Immigration Rules para 56A(v) (added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 486) para 4).

NOTES 3, 4--Immigration Rules para 56A(ii) substituted: Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 26.

NOTE 6--Immigration Rules para 56A(i) substituted by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 35; and amended by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 20.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/B. ADMISSION OF PERSONS FOR TEMPORARY PURPOSES/101. Working holidaymakers and their children.

101. Working holidaymakers and their children.

A commonwealth citizen¹ aged 17 to 27 inclusive² who intends to take employment incidental to a holiday³ and to leave the United Kingdom⁴ at the end of the holiday⁵ may be given leave to enter the United Kingdom as a working holidaymaker provided that he holds a valid United Kingdom entry clearance for the purpose⁶ and:

- 140 (1) he is either unmarried or is married to a person qualifying for entry, and the two are taking a working holiday together⁷;
- 141 (2) he has no dependent children of five years of age or over or who will reach five years of age before the working holiday is completed, or other commitments which would require him to earn a regular income⁸;
- 142 (3) he has the means to pay for his return or outward journey and will not have recourse to public funds⁹; and
- 143 (4) if he has previously spent time in the United Kingdom as a working holidaymaker, he is not seeking leave to enter to a date beyond two years from the date he was first given leave to enter in this capacity¹⁰.

A person seeking leave to enter the United Kingdom as a working holidaymaker who satisfies these requirements, and who is able to produce to the immigration officer, on arrival, a valid entry clearance for entry in this capacity, may be admitted for a period not exceeding two years with a condition restricting his freedom to take employment¹¹. The immigration officer must, however, refuse leave to enter if the working holidaymaker does not have a valid entry clearance¹².

A child of a person admitted to or allowed to remain in the United Kingdom as a working holidaymaker may be admitted or allowed to remain for the same period of leave as that granted to the working holidaymaker provided that, in relation to an application for leave to enter, a valid United Kingdom entry clearance for entry in this capacity is produced to the

immigration officer on arrival or, in the case of an application for leave to remain, he was admitted with a valid United Kingdom entry clearance for entry in this capacity¹³ and the Secretary of State¹⁴ is satisfied that:

- 144 (a) he is the child of a parent¹⁵ admitted to or allowed to remain in the United Kingdom as a working holidaymaker¹⁶;
- 145 (b) he is under the age of five and will leave the United Kingdom before reaching that age¹⁷;
- 146 (c) he can and will be maintained and accommodated adequately without recourse to public funds or without his parent or parents engaging in business or taking employment¹⁸; and
- 147 (d) unless the parent he is accompanying or joining is his sole surviving parent or has had sole responsibility for his upbringing, both parents are being or have been admitted to or allowed to remain in the United Kingdom or there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable and suitable arrangements have been made for his care¹⁹.

Leave to enter or remain in the United Kingdom as the child of a working holidaymaker must be refused if, in relation to an application for leave to enter, a valid United Kingdom entry clearance for entry in this capacity is not produced or, in the case of an application for leave to remain, the applicant was not admitted with a valid United Kingdom entry clearance for entry in this capacity or cannot satisfy the applicable requirements²⁰.

A working holidaymaker may be granted an extension of stay, with a condition restricting his freedom to take employment, if he: (i) entered the United Kingdom with a valid entry clearance as such; (ii) continues to meet the requirements of the rules for granting leave to enter or remain²¹; and (iii) would not remain in that capacity for over two years if leave was granted²². An application for such an extension must be refused if any of these conditions is not met²³.

1 See Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 95(i). See further the *Immigration Directorates' Instructions* Chapter 4 (Permit-Free Employment (Short Term) and Training) Section 2 (November 2000).

2 Immigration Rules para 95(ii). This requirement is satisfied if the working holidaymaker was between these ages when first given leave to enter in this capacity: Immigration Rules para 95(ii). There is some flexibility for persons who are over-age on initial application: see the *Immigration Directorates' Instructions* (August 2001) Chapter 4 (Permit-Free Employment (Short Term) and Training) Section 2 Annex C paragraph 1.2 (August 2001).

3 Immigration Rules para 95(vi). Although it is expressly provided that a person must not intend to engage in business, provide services as a professional sportsman or entertainer, or pursue a career in the United Kingdom (see the Immigration Rules para 95(vi)), this does not preclude the taking of periodic full-time work per se: *Clive-Lowe v Immigration Officer, Heathrow* [1992] Imm AR 91. Full-time employment for the whole of the holiday is not, however, incidental: *Gunatilake v Entry Clearance Officer, Colombo* [1975] Imm AR 23. Involvement in the direction of a limited company is not necessarily outside the Immigration Rules para 95: *Clive-Lowe v Immigration Officer, Heathrow* supra. See also the *Immigration Directorates' Instructions* Chapter 4 (Permit-Free Employment (Short Term) and Training) Section 2 Annex C paragraph 2.2 (August 2001). As to the meaning of 'employment' see para 93 note 35 ante.

4 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

5 Immigration Rules para 95(viii).

6 Immigration Rules para 95(x). As to entry clearances see para 96 ante.

7 Immigration Rules para 95(iii).

8 Immigration Rules para 95(vii).

9 Immigration Rules para 95(iv), (v). The provisions have some flexibility in application: see the *Immigration Directorates' Instructions* Chapter 4 (Permit-Free Employment (Short Term) and Training) Section 2 Annex C paragraph 1.4 (August 2001) (the requirement that the person has the means to pay for the onward journey is satisfied if the necessary funds are likely to be earned in the course of the working holiday). For the meaning of 'public funds' see para 99 note 8 ante.

10 Immigration Rules para 95(ix).

11 Immigration Rules para 96. Leave granted as a working holidaymaker is in a different category from leave granted for employment: *Secretary of State for the Home Department v Pope* [1987] Imm AR 10. There is no obligation on an intending working holidaymaker to show that he will work at all during his stay or even to put forward realistic proposals for the work that he might do (although any proposals he does make may be a relevant consideration in testing his bona fides): *Bari v Immigration Appeal Tribunal* [1987] Imm AR 13, CA; but see the *Immigration Directorates' Instructions* Chapter 4 (Permit-Free Employment (Short Term) and Training) Section 2 Annex C paragraph 2.1 (August 2001).

12 Immigration Rules para 97.

13 Immigration Rules paras 101(v), 102.

14 As to the Secretary of State see para 2 ante.

15 As to the meaning of 'parent' see para 96 note 7 ante.

16 Immigration Rules para 101(i).

17 Immigration Rules para 101(ii).

18 Immigration Rules para 101(iii). This does not include employment such as is envisaged in the Immigration Rules para 95 (see the text and notes 1-10 supra).

19 Immigration Rules para 101(iv).

20 Immigration Rules para 103. The applicable requirements are those set out in the Immigration Rules para 101 (see heads (a)-(d) in the text; and notes 14-19 supra).

21 Ie the requirements set out in the Immigration Rules para 95 (see the text and notes 1-10 supra), excluding those concerned with previous time spent as a working holidaymaker and the holding of an entry clearance: Immigration Rules para 98.

22 Immigration Rules paras 98, 99.

23 Immigration Rules para 100.

UPDATE

101 Working holidaymakers and their children

TEXT AND NOTES--These provisions have been deleted: Statement of Changes in Immigration Rules (HC Paper (2004-05) no 302) para 4; Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 39(d)-(f).

As to the requirements for an extension of stay to take employment for a working holidaymaker, see the Immigration Rules para 131D (added by Statement of Changes in Immigration Rules (Cm 5949 (2003) para 4; and substituted by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 302).

As to the requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a working holidaymaker, see the Immigration Rules para 206F (added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 346) para 12).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/B. ADMISSION OF PERSONS FOR TEMPORARY PURPOSES/102. Students and prospective students.

102. Students and prospective students.

The requirements to be met by a person seeking leave to enter the United Kingdom¹ as a student are:

- 148 (1) that he has been accepted² for a course of study³ at a publicly-funded institution of further or higher education⁴, a bona fide private educational institution which maintains satisfactory records of enrolment and attendance⁵, or an independent fee-paying school outside the maintained sector⁶;
- 149 (2) that he is able and intends to follow⁷ a recognised full-time degree course at a publicly-funded institution of further or higher education⁸, a weekday full-time course involving attendance at a single institution for a minimum of 15 hours of organised daytime study per week of a single subject or directly related subjects⁹, or a full-time course of study at an independent fee-paying school¹⁰;
- 150 (3) that, if under the age of 16, he is enrolled at an independent fee-paying school on a full-time course of studies which meets statutory requirements¹¹;
- 151 (4) that he intends to leave the United Kingdom at the end of his studies¹²;
- 152 (5) that he does not intend to engage in business or to take employment, except part-time or vacation work undertaken with the consent of the Secretary of State¹³; and
- 153 (6) that he is able, without taking employment, engaging in business or having recourse to public funds, to meet the cost of the course and his accommodation and the maintenance of himself and any dependants¹⁴.

Leave to enter will be granted, with a condition restricting employment, if each of these requirements is met, but must be refused if any of them is not¹⁵. The length of time for which a student may be admitted is that appropriate to the length of the course of study and his means¹⁶. However, an extension of stay may be granted, subject to a restriction on his freedom to take employment¹⁷, where the student:

- 154 (a) was last admitted to the United Kingdom with a valid student or prospective student entry clearance (if he is a visa national)¹⁸;
- 155 (b) meets the requirements for admission as a student¹⁹;
- 156 (c) has produced evidence of his enrolment on an appropriate course²⁰;
- 157 (d) can produce satisfactory evidence of regular attendance during any course which he has already begun, or any other course for which he has been enrolled in the past²¹;
- 158 (e) can show evidence of satisfactory progress in his course of study including the taking and passing of any relevant examinations²²;
- 159 (f) would not, as a result of an extension of stay, spend more than four years on short courses²³; and
- 160 (g) has not come to the end of a period of government or international scholarship agency sponsorship, or has the written consent of his official sponsor for a further period of study in the United Kingdom and satisfactory evidence that sufficient sponsorship funding is available²⁴.

A person admitted or granted leave to remain as a student²⁵ may be granted an extension of stay to take employment²⁶ where:

- 161 (i) he has completed a recognised degree course at either a United Kingdom publicly-funded institution of further or higher education or a bona fide private education institution which maintains satisfactory records of enrolment and attendance²⁷;
- 162 (ii) he holds a valid Home Office immigration employment document²⁸;
- 163 (iii) if he is a member of a government or international scholarship agency sponsorship which is either ongoing or has recently come to an end at the time of the requested extension, he has the written consent of his official sponsor to such employment²⁹; and
- 164 (iv) he satisfies the requirements for entry for work permit employment³⁰.

The requirements to be met by a person seeking leave to enter the United Kingdom as a prospective student are: (A) that he can demonstrate a genuine and realistic intention of undertaking, within six months of the date of entry, a course of study which would meet the requirements for an extension of stay as a student³¹; (B) that he intends to leave the United Kingdom on completion of his studies or on the expiry of the leave to enter if he does not qualify for further stay as described above³²; and (C) that he can meet the maintenance and accommodation requirements for himself and his dependants while making arrangements for study and during his course without working or recourse to public funds³³. Leave to enter will be granted, with a condition restricting employment, if each of these requirements is met, but must be refused if any of them is not³⁴. A prospective student may be admitted for a period up to a maximum of six months³⁵, although a prospective student who was admitted to the United Kingdom with a valid student entry clearance (if he is a visa national)³⁶, who meets the requirements for admission as a prospective student³⁷, and who would not, as a result of an extension of stay, spend more than six months in the United Kingdom³⁸, may be granted an extension of stay, with a prohibition on employment³⁹. However, an extension must be refused if any of these requirements is not met⁴⁰.

A person admitted as a student or prospective student may be granted leave to remain for approved training or work experience⁴¹, but, having been granted leave to enter as students, may not be granted extensions of leave to remain in another temporary capacity, for example for working holidays⁴², as au pairs⁴³, or for business⁴⁴. A student may, however, remain in the United Kingdom with a view to settlement if he is the spouse⁴⁵ or unmarried partner⁴⁶ or a child⁴⁷ or close relative of a person who is settled there⁴⁸ or if he is a Commonwealth citizen with a United Kingdom-born grandparent⁴⁹.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 A conditional acceptance may not be enough: *Chinwo v Secretary of State for the Home Department* [1985] Imm AR 74.

3 A course of study may go beyond the immediate course to be undertaken so long as the student has a coherent and definite educational proposal which could reasonably be carried out: *R v Chief Immigration Officer, Gatwick Airport, ex p Kharrazi* [1980] 3 All ER 373, [1980] 1 WLR 1396, CA (boy of 12 may be admitted as a student to undertake a course of study which might follow through to the attainment of a university degree since, although involving separate arrangements moving from the school to university or from a preparatory school to a public school, they were part of a coherent whole). However, a course of study must be something more than a coaching scheme supplemental to some other endeavour; it must have a termination point and not be of indefinite length: *Kpoma v Secretary of State for the Home Department* [1973] Imm AR 25.

4 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 57(i)(a). As to further education see **EDUCATION** vol 15(2) (2006 Reissue) paras 579 et seq. As to higher education see **EDUCATION** vol 15(2) (2006 Reissue) paras 646 et seq.

5 Immigration Rules para 57(i)(b). See *R v Immigration Appeal Tribunal, ex p Idiarto* [1991] Imm AR 546. For guidance on accredited and recognised private schools and colleges see the *Immigration Directorates' Instructions* Chapter 3 (Students) Section 1 Annex C (March 2002).

6 Immigration Rules para 57(i)(c). As to independent schools see **EDUCATION** vol 15(1) (2006 Reissue) paras 465 et seq.

7 The immigration officer may have regard to the adequacy of the student's qualifications (*R v Secretary of State for the Home Department, ex p Bhambra* [1985] Imm AR 28), including his general intellectual abilities (*Mahendran v Secretary of State for the Home Department* [1988] Imm AR 492) and his command of English, educational attainments in relation to the course proposed and future intended career (*R v Secretary of State for the Home Department, ex p Ozkurtulus* [1986] Imm AR 80 (inability to converse in English was relevant where the intended course required a high standard)). The immigration officer may take account of the immigration history of an applicant and whether he has fulfilled his study plans on previous occasions: *R v Secretary of State for the Home Department, ex p Fernando* [1987] Imm AR 377. However, the immigration officer should normally defer to the academic institution which has assessed the student's ability to follow the course, and where there are doubts should contact the principal: see the *Immigration Directorates' Instructions* Chapter 3 (Students) Section 1 Annex A paragraph 1 (December 2001).

8 Immigration Rules para 57(ii)(a).

9 Immigration Rules para 57(ii)(b). Only degree students are not required to satisfy the detailed rules as to the weekly period of study. It has been held that the 15 hours may not be made up of a collection of part-time courses and must normally be class time in the institution concerned, or study under the supervision of staff, and that night or weekend study will not qualify: see *R v Immigration Appeal Tribunal, ex p Idiaro* [1991] Imm AR 546. See also the *Immigration Directorates' Instructions* Chapter 3 (Students) Section 1 Annex A paragraph 6 (December 2001).

10 Immigration Rules para 57(ii)(c).

11 Immigration Rules para 57(iii). The statutory requirements referred to in the text are the requirements of the Education Act 1996, which replace those of the Education Act 1944: see **EDUCATION** vol 15(1) (2006 Reissue) para 1.

12 Immigration Rules para 57(iv). The requisite intention is an intention to leave at the end of the whole of the studies and not just the particular course (see *R v Chief Immigration Officer, Gatwick Airport, ex p Kharrazi* [1980] 3 All ER 373, [1980] 1 WLR 1396, CA), and an intention to undergo vocational training or even an apprenticeship following academic studies may be sufficient (*Patel v Immigration Appeal Tribunal* [1983] Imm AR 76, CA). The immigration officer is entitled to refuse entry on coming to the conclusion that the primary purpose of a person seeking leave to enter to attend a course is not attendance at the course but settlement; but the fact that the person has in mind the conditional possibility, amongst other things, of being allowed to stay in the United Kingdom should not affect his right of entry, provided that the course of instruction is the primary purpose of entry: *R v Immigration Appeals Adjudicator, ex p Perween Khan* [1972] 3 All ER 297, [1971] 1 WLR 1058, DC. The question of conditional intention (as opposed to present intention) to stay on after completion of studies is one of fact in each case. The harbouring and expression of a hope and desire to stay on do not necessarily nullify the present intention to leave at the end of the course or courses of study: see *R v Immigration Appeal Tribunal, ex p Shaikh* [1981] 3 All ER 29, [1981] 1 WLR 1107. The relationship between the studies and employment prospects in the student's country of origin may be indicative of an intention to return (*Goffar v Entry Clearance Officer, Dacca* [1975] Imm AR 142; *Ghosh v Entry Clearance Officer, Calcutta* [1976] Imm AR 60), but even evidence that those employment prospects are virtually nil would not necessarily disprove an intention to leave the United Kingdom if other factors pointed to the genuineness of the applicant's professed intentions (*Islam v Entry Clearance Officer, Dacca* [1974] Imm AR 83).

13 Immigration Rules para 57(v). As to the meaning of 'employment' see para 93 note 35 ante. As to what amounts to substantial and persistent (as opposed to mere technical and insignificant) breaches of the restriction on employment see *R v Secretary of State for the Home Department, ex p Sadiq* [1990] Imm AR 364.

The distinction between engaging in and transacting business (see para 99 note 1 ante) is relevant in drawing the boundaries between permissible and impermissible economic activity. See also *Strasburger v Secretary of State for the Home Department* [1978] Imm AR 165 (sale by a student of her artwork did not constitute engaging in business even if she had sold all the paintings that she had produced).

14 Immigration Rules para 57(vi). For the meaning of 'public funds' see para 99 note 8 ante. For the admission of the spouse and children of a person granted leave to enter as a student see para 105 post. See also *Puri v Secretary of State for the Home Department* [1972] Imm AR 21.

15 Immigration Rules paras 58, 59.

16 Immigration Rules para 58.

17 Immigration Rules para 61. An extension of stay must however be refused if the Secretary of State is not satisfied that each of the requirements set out in heads (a)-(g) in the text is met: Immigration Rules para 62. As to the Secretary of State see para 2 ante.

18 Immigration Rules para 60(i) (substituted by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 3). As to visa nationals see para 96 ante. The Immigration Rules para 60(i) (as substituted) does not apply to an application for extension of stay for the purpose of studying made by a national of the Slovak Republic whose current leave to enter or remain was granted before 8 October 1998, or a national of the Republic of Croatia whose current leave to enter or remain was granted before 19 November 1999: see Statement of Changes in Immigration Rules (Cm 4065) (1998) para 2; Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 22) para 2. See also Statement of Changes in Immigration Rules (Cm 2663) (1994) para 2; Statement of Changes in Immigration Rules (HC Paper (1994-95) no 797) para 2; Statement of Changes in Immigration Rules (Cm 3073) (1996) para 2; Statement of Changes in Immigration Rules (HC Paper (1995-96) no 274) para 2; Statement of Changes in Immigration Rules (HC Paper (1995-96) no 329) para 8; Statement of Changes in Immigration Rules (Cm 3669) (1997) para 1; Statement of Changes in Immigration Rules (HC Paper (1997-98) no 161) para 2.

Entry clearance as a prospective student (see the text and notes 31-40 *infra*) counts as a student entry clearance. A visa national may not switch from visitor to student status: *Okello v Secretary of State for the Home Department* [1995] Imm AR 269, CA.

19 Immigration Rules para 60(ii). The requirements for admission as a student are set out in the Immigration Rules para 57(i)-(vi): see the text and notes 1-14 *supra*.

20 Immigration Rules para 60(iii). An appropriate course is one which meets the requirements of the Immigration Rules para 57: see the heads (2)-(3) in text and notes 7-11 *supra*.

21 Immigration Rules para 60(iv). Attendance is to be judged at the time of the application for extension and not on the basis of a subsequent improvement: *Juma v Secretary of State for the Home Department* [1974] Imm AR 96.

22 Immigration Rules para 60(v). Lack of success in, or failure to sit, examinations, may be taken into account (*R v Immigration Appeal Tribunal, ex p Gerami* [1981] Imm AR 187; *R v Secretary of State for the Home Department, ex p Adebodun* [1991] Imm AR 60), although failure should be balanced against the student's investment in the course and other relevant factors (*Ofoajoku v Secretary of State for the Home Department* [1991] Imm AR 68). Where there are doubts over a student's progress but attendance is satisfactory and all other requirements are met, leave may be granted with a warning that failure to produce evidence of satisfactory progress could result in refusal of a further extension: see the *Immigration Directorates' Instructions* Chapter 3 (Students) Section 1 Annex A paragraph 9.3 (December 2001).

23 Immigration Rules para 60(vi). This rule is not intended to prevent a student from taking short courses forming part of a planned course with a defined educational objective: see the *Immigration Directorates' Instructions* Chapter 3 (Students) Section 1 Annex A paragraph 10 (December 2001). For these purposes, 'short courses' are courses of less than two years duration, or longer courses broken off before completion: Immigration Rules para 60(vi).

24 Immigration Rules para 60(vii) (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 11).

25 Leave granted in accordance with the Immigration Rules paras 57-62 (as amended) (see the text and notes 1-17 *supra*).

26 Immigration Rules para 131A(i) (para 131A added by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 9). These requirements apply unless the applicant is otherwise eligible for an extension of stay for employment under the Immigration Rules: Immigration Rules para 131A (as added).

27 Immigration Rules para 131A(ii) (as added: see note 26 *supra*).

28 Immigration Rules para 131A(iii) (as added: see note 26 *supra*). 'Immigration employment document' means a work permit or any other document which relates to employment and is issued for the purpose of the Immigration Rules or in connection with leave to enter or remain in the United Kingdom: Immigration Rules para 6 (amended by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 1(b)). As to work permits see paras 109-110 *post*.

29 Immigration Rules para 131A(iv) (as added: see note 26 *supra*).

30 Immigration Rules para 131A(v) (as added: see note 26 *supra*). As to the requirements for entry for work permit employment see the Immigration Rules para 128(ii)-(vi); and para 110 *post*.

31 Immigration Rules para 82(i). As to the requirements for an extension of stay as a student see heads (a)-(g) in the text; and notes 18-24 supra. In *Alexander v Immigration Appeal Tribunal* [1982] 2 All ER 766, [1982] 1 WLR 1076, the House of Lords equated genuine and realistic intentions with the requirement to show ability and intention to follow a full-time course of study. For an intention to be realistic there must be correspondence between the student's previous attainments and the nature of the course proposed, and a relationship between the benefits to the student and future job prospects: *Secretary of State for the Home Department v Virdee* [1972] Imm AR 215 (application rejected because of an 'obvious lack' of such correspondence). The immigration officer must defer to the views of any appropriate academic institution when he assesses these matters, and the prospective student's intention is realistic if he shows that his educational qualifications are acceptable to the proposed institution: *Sharma v Secretary of State for the Home Department* (11 October 1971, unreported), IAT; and see note 7 supra.

32 Immigration Rules para 82(ii).

33 Immigration Rules para 82(iii). Provision is made for the admission of the spouse and child of a prospective student: see Immigration Rules paras 76-81 (as amended); and para 105 post.

34 Immigration Rules paras 83, 84.

35 Immigration Rules para 83.

36 Immigration Rules para 85(i) (amended by Statement of Changes in Immigration Rules (Cm 3953) (1998) para 2).

37 Immigration Rules para 85(ii). The requirements referred to in the text are the requirements of the Immigration Rules para 82 (see the text and notes 31-33 supra).

38 Immigration Rules para 85(iii).

39 Immigration Rules paras 85, 86.

40 Immigration Rules para 87. The requirements referred to in the text are those of the Immigration Rules para 85 (see the text and notes 36-38 supra).

41 See the Immigration Rules para 119; and para 111 post.

42 See the Immigration Rules para 98; and para 101 ante.

43 See the Immigration Rules para 92; and para 108 post.

44 See the Immigration Rules para 206 (extension of stay as a business person). Nationals of European Community Association Agreement countries may remain to set up in business: see the Immigration Rules para 217; and para 114 post.

45 See the Immigration Rules para 284 (as substituted); and para 122 post.

46 See the Immigration Rules paras 295D, 295E (both as added); and para 123 post.

47 See the Immigration Rules paras 298, 311; and para 125 post.

48 See the Immigration Rules para 317 (as amended); and para 137 post.

49 See the Immigration Rules para 189; and para 112 post. As to Commonwealth citizens see para 11 ante.

UPDATE

102 Students and prospective students

TEXT AND NOTES 1-24--Immigration Rules paras 57-52 deleted: Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 27(a).

TEXT AND NOTE 27--In head (i) for 'completed' read 'obtained a degree qualification on' and for 'private education institution' read 'United Kingdom private education institution': Immigration Rules para 131A(ii) (amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 104) PARA 3).

TEXT AND NOTES 31-33--Also, head (D) that he holds a valid United Kingdom entry clearance for entry in this capacity: Immigration Rules para 82(iv) (added by Statement of Changes in Immigration Rules (Cm 7074) (2007) PARA 16).

TEXT AND NOTES 31, 32--Replaced. Now, heads (A) that he can demonstrate a genuine and realistic intention of undertaking, within six months of his date of entry, (a) a course of study which would meet the requirements for an extension of stay as a student under the Immigration Rules paras 60-67, or (b) a supervised practice placement or midwife adaptation course which would meet the requirements for an extension of stay as an overseas qualified nurse or midwife under the Immigration Rules paras 69P-69R; (B) that he intends to leave the United Kingdom on completion of his studies or on the expiry of his leave to enter if he is not able to meet the requirements for an extension of stay (a) as a student in accordance with the Immigration Rules para 60 or 67, or as an overseas qualified nurse or midwife in accordance with the Immigration Rules para 69P: Immigration Rules para 82(i), (ii) (substituted by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 645) PARAS 13, 14; and amended by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) paras 38-41).

TEXT AND NOTE 36--Words '(if he is a visa national)' omitted: Immigration Rules para 85(i) (amended by Statement of Changes in Immigration Rules (Cm 7074) (2007) PARA 18).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/B. ADMISSION OF PERSONS FOR TEMPORARY PURPOSES/103. Student nurses and prospective student nurses.

103. Student nurses and prospective student nurses.

A student nurse is a person accepted for training as a student nurse or midwife leading to a registered nursing qualification, or an overseas nurse or midwife who has been accepted on an adaptation course leading to registration as a nurse with the United Kingdom Central Council for Nursing, Midwifery and Health Visiting¹. The requirements for entry as a student nurse are:

- 165 (1) that the person fits the definition of student nurse and has been accepted, other than by means of a misrepresentation, for a course of study that he is able and intends to follow in a recognised nursing educational establishment offering nursing training which meets the requirements of the United Kingdom Central Council for Nursing, Midwifery and Health Visiting²;
- 166 (2) that he does not intend to engage in business or take employment not connected with the training course³;
- 167 (3) that he intends to leave the United Kingdom at the end of the course⁴; and
- 168 (4) that he has sufficient funds available for accommodation and maintenance for himself and any dependants without engaging in business or taking employment (except in connection with the training course) or having recourse to public funds⁵.

Leave to enter as a student nurse will be granted, with a condition restricting employment, if each of the above requirements is met, but must be refused if any of them is not⁶. A student nurse is admitted for the duration of the relevant training course⁷. However, an extension of stay may be granted, subject to a restriction on his freedom to take employment⁸, where the student:

- 169 (a) was last admitted to the United Kingdom with a valid student or prospective student entry clearance (if he is a visa national)⁹;
- 170 (b) meets the requirements for admission as a student nurse¹⁰;
- 171 (c) has produced evidence of his enrolment at a recognised nursing educational establishment¹¹;
- 172 (d) can provide satisfactory evidence of regular attendance during any course which he has already begun, or any other course for which he has been enrolled in the past¹²;
- 173 (e) would not, as a result of an extension of stay, spend more than four years in obtaining the relevant qualification¹³; and
- 174 (f) has not come to the end of a period of government or international scholarship agency sponsorship, or has the written consent of his official sponsor for a further period of study in the United Kingdom and satisfactory evidence that sufficient sponsorship funding is available¹⁴.

A person admitted or granted leave to remain as a student nurse¹⁵ may be granted an extension of stay to take employment¹⁶ where:

- 175 (i) he holds a valid Home Office immigration employment document for employment as a nurse¹⁷;
- 176 (ii) if he is a member of a government or international scholarship agency sponsorship which is either ongoing or has recently come to an end at the time of the requested extension, he has the written consent of his official sponsor to such employment¹⁸; and
- 177 (iii) he satisfies the requirements for entry for work permit employment¹⁹.

The requirements to be met by a person seeking leave to enter the United Kingdom as a prospective student nurse are: (A) that he can demonstrate a genuine and realistic intention of undertaking, within six months of the date of entry, a course of study which would meet the requirements for an extension of stay as a student nurse²⁰; (B) that he intends to leave the United Kingdom on completion of his studies or on the expiry of the leave to enter if he does not qualify for further stay described above²¹; and (C) that he can meet the maintenance and accommodation requirements for himself and his dependants while making arrangements for study and during his course without working or recourse to public funds²². Leave to enter will be granted, with a condition restricting employment, if each of the above requirements is met, but must be refused if any of them is not²³. A prospective student nurse may be admitted for a period up to a maximum of six months²⁴, although a prospective student nurse who was admitted to the United Kingdom with a valid student entry clearance (if he is a visa national), who meets the requirements for admission as a prospective student nurse²⁵, and who would not, as a result of an extension of stay, spend more than six months in the United Kingdom, may be granted an extension of stay, with a prohibition on employment²⁶. However, an extension must be refused if any of these requirements is not met²⁷.

1 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 63. For details of the relevant nursing courses and qualifications see the *Immigration Directorates' Instructions* Chapter 3 (Students) Section 2 Annex G (March 2002).

2 Immigration Rules para 64(i)-(iv). See also para 102 note 7 ante.

3 Immigration Rules para 64(v). As to the meaning of 'employment' see para 93 note 35 ante. Student nurses may, as a concession, undertake eight weeks' employment in the hospital that they will be trained in: see the *Immigration Directorates' Instructions* Chapter 3 (Students) Section 2 Annex F paragraph 1 (December 2001). See also para 102 note 13 ante.

4 Immigration Rules para 64(vi). As to the meaning of 'United Kingdom' see para 5 note 1 ante. See also para 102 note 12 ante. An extension may, however, be granted in certain circumstances: see the text and notes 15-19 infra.

5 Immigration Rules para 64(vii). For the meaning of 'public funds' see para 99 note 8 ante. The possession of a Department of Health bursary may be taken into account in assessing whether the student meets the maintenance requirement. Provision is made for the admission of the spouse and children of a person granted leave to enter as a student nurse: see para 105 post.

6 Immigration Rules paras 65, 66.

7 Immigration Rules para 65.

8 Immigration Rules para 68. An extension of stay must, however, be refused if the Secretary of State is not satisfied that each of the requirements set out in heads (a)-(f) in the text is met: Immigration Rules para 69. As to Secretary of State see para 2 ante.

9 Immigration Rules para 67(i) (substituted by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 4). As to visa nationals see para 96 ante. The Immigration Rules para 67(i) (as substituted) does not apply to an application for extension of stay for the purpose of studying made by a national of the Slovak Republic whose current leave to enter or remain was granted before 8 October 1998 or a national of the Republic of Croatia whose current leave to enter or remain was granted before 19 November 1999: see Statement of Changes in Immigration Rules (Cm 4065) (1998) para 2; Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 22) para 2.

10 Immigration Rules para 67(ii). The requirements for admission as a student nurse are set out in the Immigration Rules para 64(i)-(vii): see the text and notes 1-5 supra.

11 Immigration Rules para 67(iii).

12 Immigration Rules para 67(iv). See also para 102 note 21 ante.

13 Immigration Rules para 67(v).

14 Immigration Rules para 67(vi) (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 12).

15 The leave granted in accordance with the Immigration Rules paras 63-69 (as amended) (see the text and notes 1-14 supra).

16 Immigration Rules para 131B(i) (para 131B added by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 9). These requirements apply unless the applicant is otherwise eligible for an extension of stay for employment under the Immigration Rules: Immigration Rules para 131B (as so added).

17 Immigration Rules para 131B(iii) (as added: see note 16 supra). For the meaning of 'immigration employment document' see para 102 note 28 ante.

18 Immigration Rules para 131B(iv) (as added: see note 16 supra).

19 Immigration Rules para 131B(v) (as added: see note 16 supra). As to the requirements for entry for work permit employment see the Immigration Rules para 128(ii)-(vi); and para 110 post.

20 Immigration Rules para 82(i). As to the requirements for an extension of stay as a student nurse see heads (a)-(g) in the text; and notes 9-14 supra. See also para 102 note 26 ante.

21 Immigration Rules para 82(ii).

22 Immigration Rules para 82(iii). While the Immigration Rules make no express provision for the admission of the spouses and children of persons admitted as prospective student nurses it may be inferred from the Immigration Rules para 82(iii) that the provisions of the Immigration Rules paras 76-81 (as amended) (see para 105 post) apply.

23 Immigration Rules paras 83, 84.

24 Immigration Rules para 83.

25 The requirements of the Immigration Rules para 82: see heads (A)-(C) in the text; and notes 20-22 supra.

26 Immigration Rules paras 85, 86.

27 Immigration Rules para 87. The requirements referred to in the text are those of the Immigration Rules para 85 (see the text and notes 25-26 supra).

UPDATE

103 Student nurses and prospective student nurses

TEXT AND NOTES 1-14--Immigration Rules paras 63-69 deleted: Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 27(b).

As to the requirements for an extension of stay as an overseas qualified nurse or midwife, see Immigration Rules para 69P (added by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 645) para 10; and amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) para 3; and Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 39(b)).

TEXT AND NOTES 15-19--The Immigration Rules para 131B (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 645) paras 11, 12) applies also to an overseas qualified nurse or midwife.

TEXT AND NOTES 20-22--Immigration Rules para 82(i), (ii) substituted, para 82(iv) added: see PARA 102 TEXT AND NOTES 31-33.

TEXT AND NOTE 25--Words '(if he is a visa national)' omitted: Immigration Rules para 85(i) (amended by Statement of Changes in Immigration Rules (Cm 7074) (2007) para 18).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/B. ADMISSION OF PERSONS FOR TEMPORARY PURPOSES/104. Postgraduate doctors and dentists.

104. Postgraduate doctors and dentists.

A medical school graduate who is eligible for provisional or limited registration with the General Medical Council and who intends to undertake pre-registration house officer employment for up to 12 months (not having spent 12 months in aggregate in that position) may be granted leave to enter the United Kingdom for a period not exceeding 12 months¹, provided he intends to leave the United Kingdom on the completion of the training period² and is able to maintain and accommodate himself and any dependants without recourse to public funds³. Leave must, however, be refused if any of these requirements is not met⁴. Any leave so granted may be extended, for the same purpose and period and subject to the same conditions⁵, provided that the person in question would not as a result of such an extension spend more than 12 months in aggregate in such employment⁶ and the Secretary of State⁷ is satisfied that no more than four years in aggregate will be spent in senior house officer (basic specialist training) or equivalent posts⁸. An extension of leave must, however, be refused if any of the relevant requirements is not met⁹.

A doctor or dentist who is eligible for full or limited registration with the General Medical Council or Dental Council and intends to undertake postgraduate training in a hospital or the community health services (or both) may be granted leave to enter the United Kingdom for a period not exceeding three years¹⁰ provided he intends to leave the United Kingdom on the completion of the training period¹¹ and is able to maintain and accommodate himself and any

dependants without recourse to public funds¹². Leave must, however, be refused if any of these requirements is not met¹³. Any leave so granted may be extended, for the same purpose and period and subject to the same conditions¹⁴, provided that the person in question can show evidence of satisfactory progress in his postgraduate training, including the passing of any relevant examinations¹⁵, and the Secretary of State is satisfied that no more than four years in aggregate will be spent in senior house officer (basic specialist training) or equivalent posts¹⁶. An extension of leave must, however, be refused if any of the relevant requirements is not met¹⁷.

A person admitted or granted leave to remain as a postgraduate doctor or dentist¹⁸ may be granted an extension of stay to take employment¹⁹ where:

- 178 (1) he holds a valid Home Office immigration employment document²⁰;
- 179 (2) if he is a member of a government or international scholarship agency sponsorship which is either ongoing or has recently come to an end at the time of the requested extension, he has the written consent of his official sponsor to such employment²¹; and
- 180 (3) he satisfies the requirements for entry for work permit employment²².

1 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') paras 70(i)(a), 71(a) (paras 70, 71, 73, 74 substituted by Statement of Changes in Immigration Rules (HC Paper (1997-98) no 338) para 1). As to the meaning of 'United Kingdom' see para 5 note 1 ante. As to the meaning of 'employment' see para 93 note 35 ante.

2 Immigration Rules para 70(ii) (as substituted: see note 1 supra).

3 Immigration Rules para 70(iii) (as substituted: see note 1 supra). For the meaning of 'public funds' see para 99 note 8 ante. Provision is made for the admission of the spouse and children of a person granted leave to enter under these provisions: see para 105 post.

4 Immigration Rules para 72.

5 Immigration Rules paras 73(i)(a)(1), (ii), (iii), 74(a), (i) (as substituted: see note 1 supra).

6 Immigration Rules para 73(i)(a)(2) (as substituted: see note 1 supra).

7 As to the Secretary of State see para 2 ante.

8 Immigration Rules para 74(ii) (as substituted: see note 1 supra).

9 Immigration Rules para 75. The relevant requirements are those of the Immigration Rules para 73 (as substituted) (see the text and notes 5-6 supra).

10 Immigration Rules paras 70(i)(b), 71(b) (as substituted: see note 1 supra).

11 Immigration Rules para 70(ii) (as substituted: see note 1 supra).

12 Immigration Rules para 70(iii) (as substituted: see note 1 supra). Provision for the admission of the spouse and children of a person granted leave to enter as a postgraduate doctor or dentist is also made: see para 105 post.

13 Immigration Rules para 72.

14 Immigration Rules paras 73(i)(b)(1), (ii), (iii), 74(b), (i) (as substituted: see note 1 supra).

15 Immigration Rules para 73(i)(b)(2) (as substituted: see note 1 supra).

16 Immigration Rules para 74(ii) (as substituted: see note 1 supra).

17 Immigration Rules para 75. The relevant requirements are those of the Immigration Rules para 73 (as substituted) (see the text and notes 14-15 supra).

18 leave granted in accordance with the Immigration Rules paras 70-75 (as amended) (see the text and notes 1-17 *supra*).

19 Immigration Rules para 131B(ii) (para 131B added by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 9). These requirements apply unless the applicant is otherwise eligible for an extension of stay for employment under the Immigration Rules: Immigration Rules para 131B (as so added).

20 Immigration Rules para 131B(iii) (as added: see note 19 *supra*). For the meaning of 'immigration employment document' see para 102 note 28 *ante*.

21 Immigration Rules para 131B(iv) (as added: see note 19 *supra*).

22 Immigration Rules para 131B(v) (as added: see note 19 *supra*). As to the requirements for entry for work permit employment see the Immigration Rules para 128(ii)-(vi); and para 110 *post*.

UPDATE

104 Postgraduate doctors and dentists [and trainee general practitioners]

TEXT AND NOTES--As to the requirements for doctors seeking leave to enter in order to take the Professional and Linguistic Assessment Board Test, and for doctors and dentists undertaking clinical attachments, see the Immigration Rules paras 75A-75M (added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 346) PARA 7; Immigration Rules paras 75A, 75D, 75G, 75K amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) paras 5-8; Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 39(c); and Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) paras 28-31; Immigration Rules paras 75G, 75H, 75K, 75L amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) paras 5-8). As to the requirements for an extension of stay for such persons to take employment (unless they are otherwise eligible), see the Immigration Rules para 131G (added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 346) para 8).

As to the requirements for an extension of stay as a person intending to establish himself in business in the United Kingdom for a postgraduate doctor or dentist see the Immigration Rules para 206H (added by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) para 10).

TEXT AND NOTES 1-17--Immigration Rules paras 70-75 deleted: Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 27(e).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/B. ADMISSION OF PERSONS FOR TEMPORARY PURPOSES/105. Dependants of students, etc.

105. Dependants of students, etc.

The spouse of a person admitted as a student or prospective student¹, student nurse², or postgraduate doctor or dentist³, or of a person admitted in order to re-sit an examination or write up a thesis⁴, must be given leave to enter the United Kingdom⁵ provided that: (1) the marriage is subsisting; (2) the parties intend to live together; (3) there will be adequate maintenance and accommodation for the parties and any dependants without recourse to public funds; and (4) the spouse does not intend to take employment and intends to leave the United Kingdom at the end of any period of leave⁶. The child of such a person may also be

admitted provided that he: (a) is under 18 or has current leave to enter or remain in this capacity; (b) is unmarried and not part of an independent family unit or living an independent life; (c) can and will be maintained and accommodated adequately and without recourse to public funds; and (d) does not intend to stay beyond the period of leave given to the parent⁷. In either case, where the immigration officer or, in the case of an application for limited leave to remain, the Secretary of State⁸ is satisfied that each of the relevant requirements is met, leave may be given for a period not in excess of that granted to the entrant⁹. Leave must, however, be refused if any such requirement is not met¹⁰.

1 As to admission as a student or prospective student see para 102 ante. These provisions also apply where a person has had his stay as a student extended.

2 As to admission as a student nurse see para 103 ante. These provisions also apply where a person has had his stay as a student nurse extended, and may apply in the case of prospective student nurses (see para 103 note 22 ante).

3 As to admission as a postgraduate doctor or dentist see para 104 ante. These provisions also apply where a person has had his stay as a postgraduate doctor or dentist extended.

4 As to admission in order to re-sit an examination or write up a thesis see para 106 post. These provisions also apply where a person has had his stay in this capacity extended.

5 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

6 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 76 (amended by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 31) paras 4, 5); Immigration Rules para 77 (amended by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 31) para 4; and Statement of Changes in Immigration Rules (HC Paper (Cm 4851) (2000) para 14). For the meaning of 'public funds' see para 99 note 8 ante. As to the meaning of 'employment' see para 93 note 35 ante. Employment may, however, be permitted where the period of leave granted to a student is or was 12 months or more: Immigration Rules para 77 (as so amended).

7 Immigration Rules para 79 (amended by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 31) paras 4, 5); Immigration Rules para 80 (amended by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 31) para 4; and Statement of Changes in Immigration Rules (HC Paper (Cm 4851) (2000) para 15). Employment may be permitted where the period of leave granted to the student is or was 12 months or more: Immigration Rules para 80 (as so amended).

8 As to the Secretary of State see para 2 ante.

9 Immigration Rules para 77 (as amended: see note 6 supra); Immigration Rules para 80 as amended: see note 7 supra).

10 Immigration Rules paras 78, 81 (both paras 78, 81 amended by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 31) para 4).

UPDATE

105 Dependants of students, etc

TEXT AND NOTES--References to spouse are now to spouse or civil partner (see PARA 121) and reference to marriage is to marriage or civil partnership: Immigration Rules paras 76-78 (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 5).

NOTE 6--Immigration Rules para 76 amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 40) para 13; Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 32.

Immigration Rules para 79 amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 40) para 14; Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) paras 33-36. Both of the applicant's parents must either be lawfully

present in the United Kingdom, or being granted entry clearance or leave to remain at the same time as the applicant, unless the student or prospective student is the applicant's sole surviving parent, or the student or prospective student parent has and has had sole responsibility for the applicant's upbringing, or there are serious or compelling family or other considerations which would make it desirable not to refuse the application and suitable arrangements have been made in the United Kingdom for the applicant's care: Immigration Rules para 79A (added by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 37).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/B. ADMISSION OF PERSONS FOR TEMPORARY PURPOSES/106. Persons re-sitting examinations or writing theses.

106. Persons re-sitting examinations or writing theses.

A person seeking leave to enter the United Kingdom¹ in order to re-sit an examination or write up a thesis: (1) must meet the requirements for admission as a student²; (2) must either not have come to the end of a period of government or international scholarship agency sponsorship or have the written consent of his official sponsor for a further period of study in the United Kingdom and satisfactory evidence that sufficient sponsorship funding is available³; and (3) must not have been previously granted either leave to re-sit the examination⁴ or 12 months' leave to write up the same thesis⁵, as the case may be. In addition, a person seeking leave to enter in order to re-sit an examination must produce written confirmation from the education institution or independent fee-paying school which he attends or attended in the previous academic year that he is required to re-sit an examination⁶, and be able to provide satisfactory evidence of regular attendance during any course which he has already begun, or any other course for which he has been enrolled in the past⁷, while a person seeking leave to enter in order to write up a thesis must be able to provide satisfactory evidence that he is a postgraduate student enrolled at an education institution⁸ and to demonstrate that his application is supported by the education institution⁹.

Leave to enter will be granted, subject to a condition restricting employment, if each of the appropriate requirements is met, but must be refused if any of them is not¹⁰. The length of time for which a person may be admitted for these purposes is the period sufficient to enable him to re-sit the examination at the first available opportunity (for examination re-sits) or 12 months (for writing up a thesis)¹¹. However, an extension of stay may be granted, for a corresponding period (in either case) and subject to a restriction on freedom to take employment, to a person who was admitted to the United Kingdom with a valid student entry clearance (if he was then a visa national) and who meets the relevant requirements¹², but must be refused if any of those requirements is not met¹³.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') paras 69A(i), 69G(i) (paras 69A-69L added by Statement of Changes in Immigration Rules (HC Paper (Cm 4851) (2000) para 13). The requirements for admission as a student are those set out in the Immigration Rules para 57(i)-(vi): see para 102 ante. For these purposes, the applicant must either meet the requirements in full or have met in the previous academic year the requirements relating to acceptance, enrolment, and ability and intention to follow a course (ie as set out in the Immigration Rules para 57(i)-(iii)) whilst continuing to meet the requirements relating to intention to leave, intention not to take employment, and ability to maintain and accommodate himself and his dependants (ie as set out in the Immigration Rules para 57(iv)-(vi)).

3 Immigration Rules paras 69A(iv), 69G(iv) (both as added: see note 2 supra).

- 4 Immigration Rules para 69A(v) (as added: see note 2 supra).
- 5 Immigration Rules para 69G(v) (as added: see note 2 supra).
- 6 Immigration Rules para 69A(ii) (as added: see note 2 supra).
- 7 Immigration Rules para 69A(iii) (as added: see note 2 supra).
- 8 Immigration Rules para 69G(ii) (as added: see note 2 supra).
- 9 Immigration Rules para 69G(iii) (as added: see note 2 supra).
- 10 Immigration Rules paras 69B, 69C, 69H, 69I (all as added: see note 2 supra). As to the meaning of 'employment' see para 93 note 35 ante. Provision is made for the admission of the spouse and children of a person granted leave to enter for the purpose of re-sitting an examination or writing a thesis: see para 105 ante.
- 11 Immigration Rules paras 69B, 69H (both as added: see note 2 supra).
- 12 Immigration Rules paras 69D, 69E, 69J, 69K (all as added: see note 2 supra). As to visa nationals see para 96 ante. As to the requirements in the case of a person seeking an extension of leave to enter for the purpose of re-sitting examinations see the Immigration Rules paras 69A, 69D, 69E (all as added) (see the text and notes 1-4, 6-7 supra). As to the requirements in the case of a person seeking an extension of leave to enter for the purpose of writing up a thesis see the Immigration Rules paras 69G, 69J, 69K (all as added) (see the text and notes 1-3, 5, 8-9 supra).
- 13 Immigration Rules paras 69F, 69L (as added: see note 2 supra).

UPDATE

106 Persons re-sitting examinations or writing theses

TEXT AND NOTES--These provisions have been deleted: Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 27(c), (d).

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/3. Immigration/(1) Control of Admission to the United Kingdom/(iii) Requirements for Admission/B. Admission of Persons for Temporary Purposes/107. Student union sabbatical officers.

107. Student union sabbatical officers.

A person seeking leave to enter the United Kingdom¹ as a student union sabbatical officer must:

- 181 (1) have been elected to a full-time salaried post as a sabbatical officer at an educational establishment at which he is registered as a student²;
- 182 (2) meet the requirements for admission as a student relating to acceptance, enrolment and ability and intention to follow a course, or have met those requirements in the academic year prior to the one in which he took up or intends to take up sabbatical office³;
- 183 (3) not intend to engage in business or take employment except in connection with his sabbatical post⁴;
- 184 (4) be able to maintain and accommodate himself and any dependants adequately without recourse to public funds⁵;

- 185 (5) show that at the end of the sabbatical post he intends to complete a course of study which he has already begun, take up a further course of study which has been deferred to enable him to take up the sabbatical post, or leave the United Kingdom⁶;
- 186 (6) not have come to the end of a period of government or international scholarship agency sponsorship, or have the written consent of his official sponsor to take up a sabbatical post in the United Kingdom⁷; and
- 187 (7) not have already completed two years as a sabbatical officer⁸.

Leave to enter will be granted, with a condition restricting employment, if each of these requirements is met, but must be refused if any of them is not⁹.

The maximum length of time for which a person may be admitted as a sabbatical officer is 12 months¹⁰. However, an extension of stay for a corresponding period may be granted, subject to conditions relating to employment, to a person who: (a) was admitted with a valid student entry clearance (if he was then a visa national); (b) meets the requirements set out above (other than that set out in head (7) above); and (c) would not, as a result of an extension of stay, remain in the United Kingdom as a sabbatical officer to a date beyond two years from the date on which he was first given leave to enter the United Kingdom in this capacity¹¹. An extension must be refused if any of the applicable requirements is not met¹².

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 87A(i) (paras 87A-87F added by Statement of Changes in Immigration Rules (HC Paper (Cm 4851) (2000) para 16).

3 Immigration Rules para 87A(ii) (as added: see note 2 supra). The requirements referred to in the text are those set out in the Immigration Rules para 57(i), (ii): see para 102 ante. See also para 102 note 7 ante.

4 Immigration Rules para 87A(iii) (as added: see note 2 supra). As to the meaning of 'employment' see para 93 note 35 ante. See also para 102 note 13 ante.

5 Immigration Rules para 87A(iv) (as added: see note 2 supra). While the Immigration Rules make no express provision for the admission of the spouses and children of persons admitted as sabbatical officers it may be inferred from the Immigration Rules para 87A(iv) (as added) that the provisions of the Immigration Rules paras 76-81 (as amended) (see para 105 ante) apply.

6 Immigration Rules para 87A(v) (as added: see note 2 supra).

7 Immigration Rules para 87A(vi) (as added: see note 2 supra).

8 Immigration Rules para 87A(vii) (as added: see note 2 supra).

9 Immigration Rules paras 87B, 87C (both as added: see note 2 supra).

10 Immigration Rules para 87B (as added: see note 2 supra).

11 Immigration Rules paras 87D, 87E (both as added: see note 2 supra). As to visa nationals see para 96 ante.

12 Immigration Rules para 87F (as added: see note 2 supra).

UPDATE

107 Student union sabbatical officers

TEXT AND NOTES--These provisions have been deleted: Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 27(f).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/B. ADMISSION OF PERSONS FOR TEMPORARY PURPOSES/108. Au pairs.

108. Au pairs.

An au pair placement is an arrangement whereby a young person¹ comes to the United Kingdom for the purpose of learning English, lives for a time as a member of an English-speaking family with appropriate opportunities for study, and helps in the home for a maximum of five hours per day in return for a reasonable allowance and with two free days per week². A person seeking leave to enter the United Kingdom as an au pair must:

- 188 (1) be seeking entry for the purpose of taking up an arranged au pair placement³;
- 189 (2) be aged 17 to 27 inclusive or have been so aged when first given leave to enter as an au pair⁴;
- 190 (3) be unmarried and without dependants⁵;
- 191 (4) be a national of specified country or territory⁶;
- 192 (5) not intend to stay in the United Kingdom for more than two years as an au pair and intend to leave on completion of his stay as an au pair⁷;
- 193 (6) if he has previously spent time in the United Kingdom as an au pair, not be seeking leave to enter to a date beyond two years from the date on which he was first given leave to enter the United Kingdom in this capacity⁸; and
- 194 (7) be able to maintain and accommodate himself without recourse to public funds⁹.

When the immigration officer is satisfied that each of these requirements is met, the person may be admitted with a prohibition on taking employment except as an au pair¹⁰. However, admission must be refused if any of the requirements is not met¹¹. The maximum period for which a person may be admitted as an au pair is two years¹², but an extension of stay may be granted, with a prohibition on employment, to a person given leave to enter whose au pair placement continues to comply with the definition and meet the requirements set out in heads (1) to (7) above, provided that the total period spent in that capacity would not, as a result of the extension, exceed two years¹³. However, an extension must be refused if any of these requirements is not met¹⁴.

1 The provisions concerning au pairs are gender neutral and apply equally to males and females.

2 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 88.

3 Immigration Rules para 89(i).

4 Immigration Rules para 89(ii).

5 Immigration Rules para 89(iii), (iv).

6 Immigration Rules para 89(v). The countries and territories currently specified are: Andorra, Bosnia-Herzegovina, Croatia, Cyprus, the Czech Republic, the Faroes, Greenland, Hungary, Macedonia, Malta, Monaco, San Marino, the Slovak Republic, Slovenia, Switzerland and Turkey: Immigration Rules para 89(v) (amended by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 329) para 4). Nationals of EEA states have a right of entry under European law: see para 225 et seq post. The omission of Poland from the list has been upheld as lawful: *R v Chief Immigration Officer, ex p Kasprzykowska* (17 May 2000, unreported), CA.

7 Immigration Rules para 89(vi), (vii).

8 Immigration Rules para 89(viii).

9 Immigration Rules para 89(ix) (added by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 31) para 6). For the meaning of 'public funds' see para 99 note 8 ante.

10 Immigration Rules para 90. A person who is not a visa national who wishes to ascertain in advance whether a proposed au pair placement is likely to meet the relevant requirements is advised to obtain an entry clearance before travelling to the United Kingdom: Immigration Rules para 90. As to the meaning of 'employment' see para 93 note 35 ante.

11 Immigration Rules para 91.

12 Immigration Rules para 90.

13 Immigration Rules paras 92, 93 (para 92 amended by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 31) para 7). An au pair may change to a new host family: see the *Immigration Directorates' Instructions* Chapter 4 (Permit-Free Employment (Short Term) and Training) Section 1 Annex A paragraph 3 (October 2001).

14 Immigration Rules para 94.

UPDATE

108 Au pairs

TEXT AND NOTES--These provisions have been deleted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 39(d).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/C. ADMISSION OF PERSONS FOR EMPLOYMENT OR BUSINESS PURPOSES OR AS INVESTORS OR AS RETIRED PERSONS OF INDEPENDENT MEANS/109. Work permits and the Highly Skilled Migrant Programme.

C. ADMISSION OF PERSONS FOR EMPLOYMENT OR BUSINESS PURPOSES OR AS INVESTORS OR AS RETIRED PERSONS OF INDEPENDENT MEANS

109. Work permits and the Highly Skilled Migrant Programme.

A work permit is a permit indicating that a person named in it is eligible, though not a British citizen¹, for entry into the United Kingdom² for the purpose of taking employment³. Work permits are issued by Work Permits (UK), a department of the Home Office⁴, and applications must be made by, and permits must be dispatched to, the employer and not the employee⁵. A work permit is not leave to enter and leave must be obtained⁶.

For business and commercial permits there is a two-tier system for issue.

The first tier involves a simplified procedure, not requiring advertising, for applications which clearly merit approval as satisfying the qualifications and experience criteria. These include:

195 (1) intra-company transfers to the United Kingdom⁷;

196 (2) senior board level posts where there is no other suitable candidate⁸;

- 197 (3) posts involving substantial inward financial investment in the United Kingdom⁹;
- 198 (4) posts demanding high levels of skill and experience recognised as being in acute short supply within the European Community¹⁰.

In such cases, permits will be granted with the minimum of checks, the posts do not need to be advertised in the United Kingdom, and the employer is not normally required to provide documentary evidence of the recruit's academic or professional qualifications and references¹¹.

The second tier covers all other applications. To qualify for a work permit in the business and commercial category the job is expected to require an individual to have either one of:

- 199 (a) a United Kingdom degree-level qualification;
- 200 (b) an HND-level occupational qualification relevant to the post on offer; or
- 201 (c) an HND-level qualification (not relevant to the post on offer) plus one year's relevant work experience,

or three years' experience using specialist skills acquired by doing the type of job for which the permit is sought, which must require NVQ level 3 or above¹². For these applications, the post must be advertised in the appropriate medium for recruiting qualified resident workers; and the employer must wait for a minimum of four weeks from the date of the advertisement, but no longer than six months, before making the application for the overseas worker to take up the position¹³.

Special provision is also made in connection with the granting of work permits to international sportspersons and entertainers¹⁴, persons training towards a professional qualification or intending to undertake short periods of work experience¹⁵, student interns¹⁶, and companies from outside the European Union providing services to British organisations under the General Agreement on Trade in Services¹⁷.

There is no statutory appeal against a refusal to issue a work permit, although judicial review may be available on normal administrative law grounds¹⁸.

The Highly Skilled Migrant Programme ('HSMP'), which is administered by Work Permits (UK), was launched on 28 January 2002 on a trial basis for an initial period of 12 months¹⁹. It is subject to review and, if it is extended, the qualifying criteria may be adjusted. The aim of the programme is to enable the United Kingdom to compete in the global economy. Whereas work permits are only available where a job has been offered and accepted, HSMP status allows individuals with exceptional skills and experience to come to the United Kingdom to seek and take work, whether in employment or self-employment. In order to make a successful application, an individual must provide evidence that he scores at least 75 points in total across five areas, namely: (i) educational qualifications; (ii) work experience; (iii) past earnings; (iv) achievement in his chosen field; and (v) prioritisation. He must also demonstrate: (A) his ability to continue to work in his chosen field in the United Kingdom; (B) that he has enough savings and/or potential income to be able to support himself and his family; and (c) that he is willing and able to make the United Kingdom his main home. Persons in the United Kingdom in a category leading to settlement, such as work permit holders, may apply to vary to HSMP status. Persons outside the United Kingdom or in the United Kingdom as visitors or in some other short-term temporary capacity are required to seek entry clearance. Successful applicants are given permission to enter or remain in the United Kingdom for a period of 12 months, and this includes their dependent family members. Applications for an extension must be made to the Home Office. If granted, permission to remain is normally given for a further three years. At the end of four years, indefinite leave may be granted on application.

Turkish workers already lawfully employed in the United Kingdom enjoy certain rights to continue and/or change their employment and associated residence rights²⁰, but these rights do not include the right to enter for employment.

1 As to British citizens see paras 8, 23-43 ante.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 As to the meaning of 'employment' see para 93 note 35 ante. Entry for work permit employment is covered by Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') paras 128-135; see para 110 post. For permit-free employment see para 112 post. The provisions relating to work permits do not apply to seamen coming to join a ship due to leave British waters: Immigration Rules para 128. The work permit scheme has been held not to be contrary to the Sex Discrimination Act 1975 or European Community law: see *Bernstein v Immigration Appeal Tribunal* [1988] Imm AR 449, CA. Work permits are now defined as a form of immigration employment document: Immigration Rules para 6 (amended by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 1(b)). As to EEA nationals see para 225 et seq post.

4 As to the Home Office see para 1 ante.

5 See the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *How to apply for a business and commercial work permit* paragraph 4 et seq. Where a form is prescribed for a particular kind of application under the Immigration Act 1971 the application must be made in that form: s 31A (added by the Immigration and Asylum Act 1999 s 165). Applications cannot be made more than six months before the employer wishes to engage the overseas worker: see the Immigration Rules para 69.

6 See paras 96 ante, 110 post. See also *Secretary of State for the Home Department v Gomes* [1990] Imm AR 576, IAT (a work permit does not represent leave to enter and working at approved employment does not represent leave to remain).

7 This involves the transfer of employees of multi-national companies who are moving to a skilled post in the United Kingdom where the post needs an established employee who has essential company knowledge and experience with at least six months' experience working with the overseas company: see the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *How to apply for a business and commercial work permit* paragraph 25(a).

8 The person must have a personal daily input into directing the company at a strategic level and substantial senior board level experience: see the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *How to apply for a business and commercial work permit* paragraph 25(b).

9 The minimum capital investment required is normally £250,000: see the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *How to apply for a business and commercial work permit* paragraph 25(c).

10 This category used to be called 'key workers' and includes mainly persons in the hotel and catering industry and those with occupational, language or cultural skills not readily available within the European Union: see the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *How to apply for a business and commercial work permit* paragraph 25(d).

11 See the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *How to apply for a business and commercial work permit* paragraphs 24, 25.

12 See the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *How to apply for a business and commercial work permit* paragraph 14. Experience can include that gained in the United Kingdom: *R v Secretary of State for the Home Department, ex p Ying Fu Chan* (25 May 1999, unreported), QBD.

13 See the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *How to apply for a business and commercial work permit* paragraphs 31-32. Head-hunters may be used for certain senior level or specialist posts: see *How to apply for a business and commercial work permit* paragraph 36. The advertising requirements apply to applications to engage entertainers who are not internationally established or unique for a job of three months or more at the same venue or series of venues: see the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *How to apply for a sportspeople and entertainers work permit* paragraphs 15-17.

14 To qualify for this procedure, sportspersons must be internationally recognised at the highest level in their sport, and be able to make a significant contribution to the development of the sport, while coaches must

be suitably qualified to the highest level; and entertainers must establish that they have performed at the highest level, have a reputation in the profession and are engaged to perform work they are capable of doing: see the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *How to apply for a sportspeople and entertainers work permit*.

15 To qualify for this category a person must be undertaking training leading to a recognised professional or specialist qualification or be undergoing a maximum of 12 months' work experience: see the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *How to apply for TWES work permit* paragraphs 19, 32; and para 111 post.

16 The person must be a student at a college or university overseas and the internship must be with a company or organisation which has a significant trading presence in the United Kingdom and other countries: see the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *How to apply for a Student Internship permit* paragraphs 3, 4.

17 This category provides for the issue of work permits to persons whose employer does not have a commercial presence in the European Union to work in the United Kingdom on a service contract awarded to the employer by a British based organisation: see the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *Guidance for United Kingdom contractors on work permit applications made under GATS* para 1.

18 *Pearson v Immigration Appeal Tribunal* [1978] Imm AR 212, CA; *R v Department of Employment, ex p Allan* [1991] Imm AR 336. Work Permits (UK) does, however, offer an appeal in the sense of an internal review.

19 See Home Office Press Release 327/2001; and the Home Office Immigration and Nationality Directorate publication *Highly Skilled Migrant Programme (HSMP) - Guidance to applicants*.

20 See the Agreement establishing an Association between the European Economic Community and Turkey (Ankara, 12 September 1963; OJ C113, 1973, p 1); Decision 1/80 of the EEC-Turkey Council of Association art 6; Case C-237/91 *Kus v Landeshauptstadt Wiesbaden* [1992] ECR I-6781, [1993] 2 CMLR 887, ECJ.

UPDATE

109-118 Admission of Persons for Employment or Business Purposes or as Investors or as Retired Persons of Independent Means

As to the requirements for an extension of stay to take employment for a Science and Engineering Graduate Scheme participant or International Graduates Scheme participant see the Immigration Rules para 131C (added by Statement of Changes in Immigration Rules (Cm 5829) (2003) para 2; substituted by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 4; and amended by Statement of Changes in Immigration Rules (Cm 7075) (2007) para 2).

109 Work permits and the Highly Skilled Migrant Programme

TEXT AND NOTES--As to requirements for indefinite leave to remain as a highly skilled migrant see Immigration Rules paras 135G-135HA (paras 135G, 135H added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 8; and substituted by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1702) para 7; Immigration Rules para 135G amended by Statement of Changes in Immigration Rules (Cm 7701) (2009) paras 2-4).

For provision, under a points-based system, (1) for highly skilled migrants who wish to work or become self-employed in the United Kingdom, (2) for migrants who wish to establish, join or take over one or more businesses in the United Kingdom, (3) for high net worth individuals making a substantial financial investment to the United Kingdom, (4) to encourage international graduates who have studied in the United Kingdom to stay on and do skilled or highly skilled work, and (5) to enable United Kingdom employers to recruit workers from outside the EEA to fill a particular vacancy that cannot be filled by a British or EEA worker see Immigration Rules Pt 6A (paras 245AA-

245ZZD), and Appendices A-G (Immigration Rules para 245AA added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) para 18); and amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) paras 40, 41; Immigration Rules paras 245A-245F added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 46; Immigration Rules paras 245H-245ZA added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) para 29; Immigration Rules paras 245ZB-245ZR added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 81; Immigration Rules paras 245ZT-245ZZD added by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 85; Immigration Rules para 245ZA-245ZR added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 81; Immigration Rules paras 245A, 245C, 245F, 245J, 245L, 245M, 245Q, 245S, 245T, 245X, 245Z amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) paras 42-80; Immigration Rules paras 245C-245F amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) paras 19-27; Immigration Rules paras 245C, 245E, 245J, 245L, 245N, 245Q, 245S, 245U, 245Z, 245ZD, 245ZF, 245ZG, 245ZH, 245ZM, 245ZR amended by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) paras 42-84; Immigration Rules paras 245D, 245E, 245T, 245ZA, 245ZD, 245ZF, 245ZG, 245ZH, 245ZV, 245ZW, 245ZY, 245ZZA-245ZZD amended by Statement of Changes in Immigration Rules (Cm 7701) (2009) paras 7-51; Immigration Rules paras 245ZX, 245ZZC amended by Statement of Changes in Immigration Rules (Cm 7711) (2009) paras 1, 2; Immigration Rules para 245ZQ amended by Statement of Changes in Immigration Rules (HC Paper (2009-10) no 120) para 8; Immigration Rules paras 245C, 245ZF, 245ZW, 245ZY, 245ZZB, 245ZZD amended by Statement of Changes in Immigration Rules (HC Paper (2009-10) no 367) paras 2-9; Immigration Rules Appendices A-E added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 41; Immigration Rules Appendix F added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) para 58; and amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 124; Immigration Rules Appendix G added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 125; Immigration Rules Appendices A, C, E, F amended by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) paras 107-144; Immigration Rules Appendices A, E amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) paras 41-53, 56, 57; and Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) paras 103-114, 122, 123; Immigration Rules Appendices B, C substituted by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) paras 54, 55; and amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) paras 115-121; Immigration Rules Appendices A-C amended by Statement of Changes in Immigration Rules (Cm 7701) (2009) paras 54-70; Immigration Rules Appendices A, C amended by Statement of Changes in Immigration Rules (HC Paper (2009-10) no 120) paras 9-21) which provides a points-based system for those wishing to enter as a points based system migrant.

As to provision for their family members see Immigration Rules paras 319AA-319K (Immigration Rules para 319AA added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 89; and amended by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) para 89; Immigration Rules para 319A-319K added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 32; and amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) paras 34-36; Immigration Rules paras 319A-319J amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 90; Immigration Rules paras 319B, 319G, 319H, 319K amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) paras 91-96; Immigration Rules paras 319C, 319D, 319H, 319I amended by Statement of Changes in Immigration Rules

(HC Paper (2008-09) no 314) paras 90-101; and Statement of Changes in Immigration Rules (HC Paper (2009-10) no 367) paras 10-13; Immigration Rules para 319D amended by Statement of Changes in Immigration Rules (Cm 7701) (2009) para 52).

As to the lawfulness of changes to the rules restricting the entry of international medical graduates see *R (on the application of BAPIO Action Ltd) v Secretary of State for the Home Department* [2008] UKHL 27, [2009] 1 All ER 93; and PARA 83 NOTE 3. See also *R (on the application of HSMP Forum Ltd) v Secretary of State for the Home Department* [2008] EWHC 664 (Admin), [2008] All ER (D) 96 (Apr) (change to Highly Skilled Migrant Programme unlawful so far as contrary to Secretary of State's representations that, once a migrant had embarked on scheme, he would enjoy benefits of it according to terms prevailing at date he joined).

As to the amount of fees see Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 42; and PARA 6.

NOTE 5--1971 Act s 31A repealed: Immigration, Asylum and Nationality Act 2006 s 50(3) (a), Sch 3.

NOTE 20--See also Case C-349/06 *Polat v Stadt Rüsselsheim* [2008] 1 CMLR 204, ECJ; and *R (on the application of Ozturk) v Secretary of State for the Home Department*; *R (on the application of Akyuz) v Secretary of State for the Home Department*; *R (on the application of Payir) v Secretary of State for the Home Department* [2006] EWCA Civ 541, [2007] 1 WLR 508; Case C-294/06 *R (on the application of Payir) v Secretary of State for the Home Department* [2009] All ER (EC) 964, ECJ (right of Turkish national, initially given leave to enter as au pair or student, to continue in employment after working in United Kingdom for more than a year, not affected); Case C-453/07 *Er v Wetteraukreis* [2009] ICR 326, [2009] All ER (D) 19 (Jan), ECJ.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/C. ADMISSION OF PERSONS FOR EMPLOYMENT OR BUSINESS PURPOSES OR AS INVESTORS OR AS RETIRED PERSONS OF INDEPENDENT MEANS/110. Persons travelling to the United Kingdom for employment which requires a work permit or varying to work permit employment after arrival.

110. Persons travelling to the United Kingdom for employment which requires a work permit or varying to work permit employment after arrival.

A person travelling to the United Kingdom¹ to seek or take employment² (including multiple entry work permit employment³) must:

- 202 (1) hold a valid work permit⁴;
- 203 (2) not be of an age which puts him outside the limits for employment⁵;
- 204 (3) be capable of undertaking the employment specified in the work permit and not intend to take employment except as specified in the work permit⁶;
- 205 (4) be able adequately to maintain and accommodate himself and any dependants without recourse to public funds⁷; and
- 206 (5) intend to leave the United Kingdom at the end of his approved period of employment (where the work permit is for 12 months or less)⁸ or at the end of the employment covered by the work permit (where the person is being admitted for multiple entry work permit employment)⁹.

Provided the relevant requirements are met, a person seeking to enter the United Kingdom for the purpose of work permit employment will be admitted for an initial period not exceeding five years (normally the period is the same as the period of validity of the permit), subject to a condition restricting him to approved employment¹⁰, and a person seeking leave to enter for multiple entry work permit employment will be admitted for a period not exceeding two years¹¹. Leave to enter must, however, be refused if the immigration officer is not satisfied that each of the relevant requirements is met¹².

An application for an extension of stay for work permit employment may be granted, for a period not exceeding the period of approved employment and subject to a condition restricting the applicant to approved employment, to a person who entered the United Kingdom with a valid work permit or who was a student, student nurse or postgraduate doctor or dentist subsequently granted an extension of stay for work permit employment¹³, and who can continue to meet the relevant requirements (other than that of intending to leave the United Kingdom at the end of his approved period of employment)¹⁴. However, an extension must be refused if the Secretary of State is not satisfied that each of these requirements is met¹⁵. Indefinite leave to remain may be granted to a work permit holder who: (a) has spent a continuous period of four years in the United Kingdom in this capacity; (b) has met the requirements for extension of stay throughout that period; and (c) is still required for the employment in question as certified by his employer¹⁶. Indefinite leave must, however, be refused if the Secretary of State is not satisfied that each of these requirements is met¹⁷.

Leave to enter or remain as the spouse, child or unmarried partner of a work permit holder may be granted¹⁸. No provision is made for the entry of the spouse or children of multiple entry work permit holders.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to the meaning of 'employment' see para 93 note 35 ante. These provisions do not apply to a person who is otherwise eligible for admission for employment (see para 112 post) or who is eligible for admission as a seaman under contract to join a ship due to leave British waters (see para 87 ante): Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') paras 128, 130.

3 'Multiple entry work permit employment' is work permit employment where the person concerned does not intend to spend a continuous period in the United Kingdom in work permit employment: Immigration Rules para 6 (amended by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 1(c)).

4 Immigration Rules paras 128(i), 199A(i) (paras 199A-199C added by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 13). As to work permits see para 109 ante.

5 Immigration Rules paras 128(ii), 199A(ii) (as added: see note 4 supra).

6 Immigration Rules paras 128(iii), (iv), 199A(iii), (iv) (as added: see note 4 supra).

7 Immigration Rules paras 128(v), 199A(v) (as added: see note 4 supra). For the meaning of 'public funds' see para 99 note 8 ante.

8 Immigration Rules para 128(vi).

9 Immigration Rules para 199A(vi) (as added: see note 4 supra).

10 Immigration Rules para 129 (amended by Statement of Changes in Immigration Rules (Cm 5253) (2001) para 3). However, an immigration officer may refuse leave to enter if false representations have been employed or material facts have not been disclosed, whether or not to the holder's knowledge, for the purpose of obtaining the permit: see the Immigration Rules para 320(15); and *R v Secretary of State for the Home Department, ex p Wah Chun Wan* (31 October 1996, unreported), QBD. See also *R v Immigration Officer, ex p Chan* [1992] 2 All ER 738, [1992] 1 WLR 541, CA (person who innocently presented false work permit did not enter in accordance with Immigration Act 1971 and was therefore an illegal entrant); *R v Secretary of State for the Home Department, ex p Ku* [1995] QB 364, [1995] 2 All ER 891, [1995] 2 WLR 589, CA (work permits issued in breach of procedure not forgeries or dishonest and were therefore not invalid and holder was accordingly not an illegal entrant); *R v Secretary of State for Education and Employment, ex p Shu Sang Li* [1999] Imm AR 367 (validly issued permit not proof that conditions required for issue had been met).

- 11 Immigration Rules para 199B (as added: see note 4 supra). See also note 10 supra.
- 12 Immigration Rules paras 130, 199C (as added: see note 4 supra).
- 13 le under the Immigration Rules para 131A (as added) or under the Immigration Rules para 131B (as added): see paras 102-104 ante.
- 14 Immigration Rules paras 131, 132 (amended by Statement of Changes in Immigration Rules (Cm 5597) (2002) paras 8, 10).
- 15 Immigration Rules para 133 (amended by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 11). However, a person who is otherwise eligible for an extension of stay under the Immigration Rules (see para 112 post) may nonetheless be given an extension: Immigration Rules para 133 (as so amended). As to the Secretary of State see para 2 ante.
- 16 Immigration Rules para 134.
- 17 Immigration Rules para 135.
- 18 See the Immigration Rules paras 194-196 (spouses), 295J-295L (as added) (unmarried partners), 197-199 (children); and paras 122-123, 127 post. Other relatives may enter by concession to join or accompany persons on intra-company transfer. Spouses, partners and children may work without permission during their period of leave.

UPDATE

109-118 Admission of Persons for Employment or Business Purposes or as Investors or as Retired Persons of Independent Means

As to the requirements for an extension of stay to take employment for a Science and Engineering Graduate Scheme participant or International Graduates Scheme participant see the Immigration Rules para 131C (added by Statement of Changes in Immigration Rules (Cm 5829) (2003) para 2; substituted by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 4; and amended by Statement of Changes in Immigration Rules (Cm 7075) (2007) para 2).

110 Persons travelling to the United Kingdom for employment which requires a work permit or varying to work permit employment after arrival

TEXT AND NOTES 1-9--Also, head (6) holds a valid United Kingdom entry clearance for entry in this capacity except where he holds a work permit valid for six months or less or he is a British National (Overseas), a British overseas territories citizen, a British Overseas citizen, a protected person or a person who under the British Nationality Act 1981 is a British subject: Immigration Rules paras 128(vii), 199A(vii) (para 128(vii) amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 1224) para 16; Statement of Changes in Immigration Rules (HC Paper (2003-04) no 95) para 2; Statement of Changes in Immigration Rules (HC Paper (2003-04) no 176) para 2; and Statement of Changes in Immigration Rules (HC Paper (2003-04) no 523) para 4; Immigration Rules para 199A amended by Statement of Changes in Immigration Rules (HC Paper (2003-04) no 176) para 3; and Statement of Changes in Immigration Rules (HC Paper (2003-04) no 523) para 6).

NOTE 10--Immigration Rules para 129 substituted: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 1224) para 17. Immigration Rules para 320(15) amended: see PARA 136.

NOTE 12--Immigration Rules para 130 substituted: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 1224) para 18.

TEXT AND NOTE 13--Words 'subsequently granted ... permit employment' omitted: Immigration Rules para 131 (amended by Statement of Changes in Immigration Rules (Cm 5829) (2003) para 1).

NOTE 13--Also under the Immigration Rules para 131 (see PARA 110), 131C (see PARA 109-118), 131D (see PARA 101), 131E, 131F or 131G (see PARA 104): Immigration Rules para 132 (substituted by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 346) para 9).

NOTE 15--Immigration Rules para 133 substituted: Statement of Changes in Immigration Rules (HC Paper (2005-06) no 346) para 9.

TEXT AND NOTE 16--Also, head (d) has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom (see PARA 124), unless he is under the age of 18 or aged 65 or over at the time he makes his application: Immigration Rules para 134 (substituted by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 11). A challenge to the introduction of this knowledge requirement has been rejected: see *R (on the application of Ooi) v Secretary of State for the Home Department* [2007] All ER (D) 279 (Dec).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/C. ADMISSION OF PERSONS FOR EMPLOYMENT OR BUSINESS PURPOSES OR AS INVESTORS OR AS RETIRED PERSONS OF INDEPENDENT MEANS/111. Training and work experience.

111. Training and work experience.

A person is eligible for admission to the United Kingdom¹ for approved training or work experience² if he:

- 207 (1) holds a valid work permit issued under the Training and Work Experience Scheme³;
- 208 (2) is not of an age which puts him outside the limits for employment⁴;
- 209 (3) is capable of undertaking the training or work experience specified in his work permit⁵;
- 210 (4) intends to leave the United Kingdom on completion of his training or work experience⁶;
- 211 (5) does not intend to take employment except as specified in his work permit⁷;
- and
- 212 (6) is able to maintain and accommodate himself and any dependants adequately without recourse to public funds⁸.

Leave will only be given if each of these requirements is met⁹, and must be refused if any of them is not¹⁰. The maximum period of leave to enter is such period as may be approved by the Home Office for the purpose, and all leave is subject to a condition restricting the holder's freedom to take or change employment¹¹.

An application for an extension of stay in this capacity may be granted to a person who: (a) entered with a valid work permit for approved training or work experience or had leave to enter or remain as a student¹²; (b) has written approval from the Home Office for an extension of stay¹³; and (c) meets the relevant requirements¹⁴. However, leave must be refused if any of these requirements is not met¹⁵. An extension of stay must not be for a period exceeding the

period approved by the Home Office for the purpose, and is subject to a condition preventing the taking or changing of employment without permission¹⁶.

Changing from training or work experience to work permit or other approved employment is prohibited under the Immigration Rules¹⁷ and under the terms of the Training and Work Experience Scheme¹⁸. Neither training nor work experience can lead to indefinite leave to remain and settlement¹⁹.

Persons undergoing training or work experience may be joined or accompanied by their spouses and children under 18²⁰.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Admission for training and work experience (TWES) is wholly separate from admission as a student in an educational institution (see para 102 ante). The criteria are set out in the Home Office Immigration and Nationality Directorate (Work Permits (UK)) publication *How to apply for TWES work permit*. TWES permits are only issued for work-based training for a professional or specialist qualification (see *How to apply for TWES work permit* paragraph 19), or for a period of work experience where the individual will be additional to the normal staffing level so as to exclude him from the general work permit category (see *How to apply for TWES work permit* paragraph 13). The training must lead to a recognised professional or specialist qualification at postgraduate level (see *How to apply for TWES work permit* paragraph 19 et seq), and the company and the person managing the training must be competent to provide it and will normally be registered or approved by the relevant professional body (see *How to apply for TWES work permit* paragraph 22). Work experience must be at managerial level or at least NVQ level 3 or equivalent: see *How to apply for TWES work permit* paragraph 29 et seq. The pay and conditions must be no more than those given to a resident worker doing equivalent work experience, but must meet the national minimum wage: see *How to apply for TWES work permit* paragraph 11 et seq.

3 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 116(i).

4 Immigration Rules para 116(ii). As to the meaning of 'employment' see para 93 note 35 ante.

5 Immigration Rules para 116(iii).

6 Immigration Rules para 116(iv).

7 Immigration Rules para 116(v).

8 Immigration Rules para 116(vi). For the meaning of 'public funds' see para 99 note 8 ante.

9 Immigration Rules para 117 (substituted by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 5).

10 Immigration Rules paras 117, 118 (para 117 as substituted: see note 9 supra).

11 Immigration Rules para 117 (as substituted: see note 9 supra).

12 Immigration Rules paras 119(i), 120. Thus a student may remain for training or work experience, but a person admitted in any other capacity may not. As to students' rights to enter and remain see para 102 ante.

13 Immigration Rules para 119(ii) (amended by Statement of Changes in Immigration Rules (Cm 5253) (2001) para 1).

14 Immigration Rules para 119(iii).

15 Immigration Rules para 121.

16 Immigration Rules para 120 (substituted by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 7).

17 See the Immigration Rules para 116(iv), (v) (intention to leave on completion of training or work experience and not to take employment except as specified); heads (4), (5) in the text and notes 6-7 supra.

18 See *Guidance notes for employers on how to apply for a training and work experience scheme work permit* paragraphs 14, 15.

19 See the Immigration Rules para 120 (as substituted).

20 See the Immigration Rules paras 122-124 (spouses), 125-127 (children); and paras 122, 127 post. Unmarried partners are not eligible to join or accompany partners undergoing training or work experience in the United Kingdom. Spouses and children may work without permission during their period of leave.

UPDATE

109-118 Admission of Persons for Employment or Business Purposes or as Investors or as Retired Persons of Independent Means

As to the requirements for an extension of stay to take employment for a Science and Engineering Graduate Scheme participant or International Graduates Scheme participant see the Immigration Rules para 131C (added by Statement of Changes in Immigration Rules (Cm 5829) (2003) para 2; substituted by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 4; and amended by Statement of Changes in Immigration Rules (Cm 7075) (2007) para 2).

111 Training and work experience

TEXT AND NOTES 1-8--Also, head (7) holds a valid United Kingdom entry clearance for entry in this capacity except where he holds a work permit valid for six months or less or he is a British National (Overseas), a British overseas territories citizen, a British Overseas citizen, a protected person or a person who under the British Nationality Act 1981 is a British subject: Immigration Rules para 116 (amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 1224) para 10; Statement of Changes in Immigration Rules (HC Paper (2003-04) no 95) para 1; Statement of Changes in Immigration Rules (HC Paper (2003-04) no 176) para 1; and Statement of Changes in Immigration Rules (HC Paper (2003-04) no 523) para 3).

TEXT AND NOTE 4--Head (2) omitted: Immigration Rules para 116(ii) deleted by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 7.

NOTES 9-16--Immigration Rules paras 117, 118, 120, 121 substituted: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 1224) paras 11-14.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/C. ADMISSION OF PERSONS FOR EMPLOYMENT OR BUSINESS PURPOSES OR AS INVESTORS OR AS RETIRED PERSONS OF INDEPENDENT MEANS/112. Persons travelling to the United Kingdom for non-work permit employment.

112. Persons travelling to the United Kingdom for non-work permit employment.

Certain categories of entrant (namely overseas journalists and broadcasters¹, sole representatives of firms from outside the United Kingdom², private servants in diplomatic households³, domestic workers in private households⁴, employees of overseas governments and international organisations⁵, ministers of religion, missionaries and members of religious orders⁶, and airport-based operational ground staff of overseas-owned airlines⁷), although coming to the United Kingdom for employment, do not need work permits. They may be admitted for an initial period not exceeding 12 months⁸, provided they hold a current entry clearance granted for the purpose⁹ and can maintain and accommodate themselves and any

dependants adequately without recourse to public funds¹⁰. Leave must, however, be refused if the appropriate entry clearance is not produced¹¹. An extension of stay may be granted to any such person¹² provided he: (1) continues to be engaged in the category of employment for which his entry clearance was granted¹³; (2) continues to be required in the employment in question¹⁴; and (3) continues to meet the relevant requirements (including the requirement that he entered the United Kingdom with current entry clearance for the relevant purpose)¹⁵. However, an extension must be refused if any of the requirements is not met¹⁶. Indefinite leave to remain may be granted if the person: (a) has spent a continuous period of four years in the capacity in which he entered¹⁷; (b) continues to meet the substantive requirements for an extension of stay or, in the case of a domestic worker in a private household, entry¹⁸; and (c) is still required for the employment in question¹⁹. However, an application for indefinite leave must be refused if any of these requirements is not met²⁰. The spouse, unmarried partner and children under 18 of a person admitted for non-work permit employment may be granted leave to enter or remain²¹.

Certain persons may also qualify for leave to enter for permit-free employment on the grounds of United Kingdom ancestry. A Commonwealth citizen²² aged 17 or over²³ who:

- 213 (i) is able to provide proof that one of his grandparents was born in the United Kingdom and Islands²⁴;
- 214 (ii) is able to work and intends to take or seek employment in the United Kingdom²⁵; and
- 215 (iii) will be able to maintain and accommodate himself and any dependants adequately without recourse to public funds²⁶,

may be granted an entry clearance in this capacity and, if he holds such an entry clearance, maybe granted leave to enter²⁷. He does not need a work permit and may be admitted for a period not exceeding four years²⁸. Leave must, however, be refused if the appropriate entry clearance is not produced²⁹. If initially admitted for a lesser period, or if a person is switching into this category after entering the United Kingdom³⁰, an extension of stay up to four years may be granted, provided the person is able to meet the entry requirements (other than that relating to holding a valid entry clearance in this capacity)³¹. An extension must, however, be refused if any of those requirements is not met³². A person who has spent a continuous period of four years in the United Kingdom in this capacity and who continues to meet the requirements for extension of stay may be granted indefinite leave to remain on application³³. However, an application for indefinite leave must be refused if any such requirement is not met³⁴. There is provision for spouses, unmarried partners and children under the age of 18 to be granted leave³⁵. The grant of entry clearance or leave to the principal or dependants is, as in all cases, subject to general grounds for refusal³⁶.

There is also provision in the Immigration Rules for leave to enter for permit-free employment to be granted to seasonal workers at agricultural camps³⁷ and to teachers and language assistants on approved exchange schemes³⁸.

1 A representative of an overseas newspaper, news agency or broadcasting organisation may qualify for leave to enter provided that: (1) he was engaged by the organisation outside the United Kingdom and is being posted to the United Kingdom on a long-term assignment as a representative; (2) he intends to work full-time as a representative of that overseas newspaper, agency or organisation; and (3) he does not intend to take employment except within these terms: Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 136(i)-(iii). These provisions extend beyond journalists to producers, news cameramen and front of camera personnel: see the *Immigration Directorates' Instructions* Chapter 5 (Employment) Section 2 paragraph 1 (November 2000). As to the meaning of 'employment' see para 93 note 35 ante.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante. To be granted leave to enter as a sole representative a person must: (1) have been recruited and taken on as an employee outside the United Kingdom as a representative of a firm which has its headquarters and principal place of business outside the

United Kingdom and which has no branch, subsidiary or other representative in the United Kingdom; (2) be a senior employee with full authority to take operational decisions on behalf of the firm for the purpose of representing it in the United Kingdom by establishing and operating a registered branch or wholly-owned subsidiary of that overseas firm; (3) not be a majority shareholder in the firm; (4) intend to be employed full-time as a representative of the firm; and (5) not intend to take employment except within these terms: Immigration Rules para 144(i)-(v). There must be a firm effectively based overseas, doing business overseas which is separate and distinct from the business in the United Kingdom being done by the sole representative: *R v Immigration Appeal Tribunal, ex p Lokko* [1990] Imm AR 539 (applicant was effectively the only member of the company's staff so that when in the United Kingdom the company's operations in Ghana would cease; refusal upheld).

3 To qualify for entry in this capacity a person must: (1) be aged over 18; (2) be employed as a private servant in the household of a member of staff of a diplomatic or consular mission who enjoys diplomatic privilege and immunity or be a member of the family forming part of the household of such a person; (3) intend to work full-time as a private servant; and (4) not intend to take employment except within these terms: Immigration Rules para 152(i)-(iv). 'Diplomatic privilege and immunity' means privilege and immunity within the terms of the Convention on Consular Relations (Vienna, 24 April 1963; TS 14 (1973); Cmnd 5219): see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 265 et seq.

4 To qualify for entry in this capacity a person must: (1) be aged 18 to 65 inclusive; (2) intend to work full-time as a domestic worker under the same roof as his employer or in a household that the employer regularly uses for himself and have been so employed for one year or more prior to application for entry clearance; and (3) intend to travel to the United Kingdom in the company of his employer, his employer's spouse or his employer's minor child; and (4) not intend to take employment except within these terms: see the Immigration Rules para 159A(i)-(v) (paras 159A-159H added by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 12) (supplementing the policy permitting regularisation of the status of domestic workers subject to abuse by their employers: see the *Immigration Directorates' Instructions* Chapter 5 (Employment) Section 12).

5 A person coming for employment by an overseas government, or employed by the United Nations or other international organisation of which the United Kingdom is a member, may be granted leave to enter if he intends to work full-time for the government or organisation concerned and does not intend to take employment except within those terms: Immigration Rules paras 160, 161(ii), (iii). See also the *Immigration Directorates' Instructions* Chapter 5 (Employment) Section 5 November 2000).

6 A minister of religion is a religious functionary whose main regular duties comprise the leading of the congregation in performing rites and rituals of the faith and preaching the essentials of the creed: Immigration Rules para 169(i). The term 'minister of religion' must be interpreted in the light of the customary practices of the particular faith but it necessarily implies an officiating role involving religious leadership: *Begum v Visa Officer, Islamabad* [1988] Imm AR 325. Whether a person is a minister will depend upon the structure of the particular religion, the extent to which it is divided between priesthood and congregation and on the facts of the individual case: *Begum v Visa Officer, Islamabad* supra; *Singh v Entry Clearance Officer, New Delhi* [1977] Imm AR 1. A Sunni Muslim Imam has been held to be held a minister of religion for these purposes, since his duties included giving religious instruction to children: *Hamid v Entry Clearance Officer, Dhaka* [1986] Imm AR 469. The core duties of ministers of religion (leading worship; providing religious education; officiating at marriages, funerals etc; counselling; and training local volunteers) are set out in the *Immigration Directorates' Instructions* Chapter 5 (Employment) Section 6 Annex Q (November 2000); the additional duties are set out in the *Immigration Directorates' Instructions* Chapter 5 (Employment) Section 6 Annex S (November 2000); and a summary of the beliefs, structures etc of the major religions is set out in the *Immigration Directorates' Instructions* Chapter 5 (Employment) Section 6 Annex T (November 2000). Ministers of religion seeking entry must have been either working for at least one year as a minister or, where ordination is prescribed by a religious faith as the sole means of entering the ministry, have been ordained as a minister of religion following at least one year's full-time or two years' part-time training for the ministry: Immigration Rules para 170(i)(a).

A missionary means a person who is directly engaged in spreading a religious doctrine and whose work is not in essence administrative or clerical: Immigration Rules para 169(ii). A person is not a missionary if working among practising members of his own faith: *Begum v Visa Officer, Islamabad* supra. The person need not be engaged in full-time evangelical preaching or counselling to be a missionary so long as the work can be distinguished from the clerical or administrative category such as bible translation: see the *Immigration Directorates' Instructions* Chapter 5 (Employment) Section 6 Annex Q paragraph 7 (November 2000). A missionary seeking leave to enter must be trained as a missionary or must have worked as a missionary and must be being sent to the United Kingdom by an overseas organisation: Immigration Rules para 170(i)(b).

A member of a religious order means a person who is coming to live in a community run by that order: Immigration Rules para 169(iii). Such an order is defined as 'strictly speaking a monastic order ... a stable mode of living in community in which the faithful bind themselves by vow to observe in addition to the precepts of the rule, the evangelical counsels of obedience, chastity and poverty', and cannot extend to a person not in such an order who is simply fulfilling the role of a spiritual guide to a lay congregation: *Hamid v Entry Clearance Officer, Dhaka* supra; approved in *Begum v Visa Officer, Islamabad* supra. See also the *Immigration Directorates' Instructions* Chapter 5 (Employment) Section 6 Annexes Q-U (November 2000). For other religious workers,

such as religious musicians, see the *Immigration Directorates' Instructions* Chapter 17 (Employment outside the Rules) Section 3 paragraph 8 (June 2002). A member of a religious order must be coming to live in a community maintained by the religious order of which he is a member and, if intending to teach, must not intend to do so save at an establishment maintained by his order: Immigration Rules para 170(i)(c).

Ministers of religion, missionaries and members of religious orders must intend to work full-time in their vocation and not intend to take employment except within these terms: Immigration Rules para 170(ii), (iii).

7 To satisfy the requirements for leave to enter as airport-based operational ground staff of an overseas-owned airline a person must: (1) have been transferred to the United Kingdom by an overseas-owned airline operating services to and from the United Kingdom to take up duties at an international airport as station manager, security manager or technical manager; (2) intend to work full-time for the airline; and (3) not intend to take employment except within these terms: Immigration Rules para 178(i), (ii). See *Attivor v Secretary of State for the Home Department* [1988] Imm AR 109, CA (a catering officer would probably not be included).

8 See the Immigration Rules paras 137, 145, 153, 159B, 162, 171, 179 (para 159B as added: see note 4 supra).

9 Immigration Rules paras 136(v), 137, 144(vii), 145, 152(vi), 153, 159A(vii) (as added: see note 4 supra), 159B (as added: see note 4 supra), 161(i), 162, 170(v), 171, 178(v), 179. A person seeking entry as an employee of overseas government or an international organisation may alternatively produce satisfactory documentary evidence of his status as such, and satisfy the immigration officer that the requirements of the Immigration Rules para 161 (see the text and notes 5-8 supra, 10 infra) are met.

10 Immigration Rules paras 136(iv), 144(vi), 152(v), 159A(vi) (as added: see note 4 supra), 161(iv), 170(iv), 178(iv). For the meaning of 'public funds' see para 99 note 8 ante.

11 Immigration Rules paras 138, 146, 154, 159C (as added: see note 4 supra), 163, 172, 180.

12 Immigration Rules paras 140, 148, 156, 159D (as added: see note 4 supra), 159E (as added: see note 4 supra), 165, 174, 182. The extension period must not exceed three years (see the Immigration Rules paras 140, 148, 165, 174, 182), except in the case of a person admitted as a private servant in a diplomatic household or as a domestic worker in a private household, in which case it must not exceed 12 months (see the Immigration Rules paras 156, 159E (as added: see note 4 supra).

13 Immigration Rules paras 139(ii), 147(ii), (iii), 155(ii), 159D(ii) (as added: see note 4 supra), 164(ii), 173(ii), 181(ii).

14 Immigration Rules paras 139(iii), 147(iv), 155(iii), 159D(iii) (as added: see note 4 supra), 164(iii), 173(iii), 181(iii). Continuing requirement for the employment in question is to be certified by the employer or, in the case of a minister or member of religious order, the leadership of the congregation or the head of the religious order: Immigration Rules paras 155(iii), 173(iii).

15 Immigration Rules paras 139(i), (iv), 147(i), (v), 155(i), (iv), 159D(i), (iv) (as added: see note 4 supra), 164(i), (iv), 173(i), (iv), 181(i), (iv).

16 Immigration Rules paras 141, 149, 157, 159F (as added: see note 4 supra), 166, 175, 183.

17 Immigration Rules paras 142(i), 150(i), 158(i), 159G(i) (as added: see note 4 supra), 167(i), 176(i), 184(i).

18 Immigration Rules paras 142(ii), 150(ii), 158(ii), 159G(ii) (as added: see note 4 supra), 167(ii), 176(ii), 184(ii).

19 Immigration Rules paras 142(iii), 150(iii), 158(iii), 159G(iii) (as added: see note 4 supra), 167(iii), 176(iii), 184(iii). Continuing requirement for the employment in question is to be certified by the employer or, in the case of a minister or member of religious order, the leadership of the congregation or the head of the religious order: Immigration Rules paras 158(iii), 159G(iii) (as so added), 176(iii).

20 Immigration Rules paras 143, 151, 159, 159H (as added: see note 4 supra), 168, 177, 185.

21 See the Immigration Rules paras 194-196 (spouses), 295J-295L (as added) (unmarried partners), 197-199 (children); and paras 122-123, 127 post. Spouses, partners and children may work without permission during their period of leave.

22 Immigration Rules para 186(i). As to Commonwealth citizens see para 11 ante.

23 Immigration Rules para 186(ii).

24 Immigration Rules para 186(iii). The term 'United Kingdom and Islands' is not defined for the purposes of the Immigration Rules, but see para 83 note 12 ante.

25 Immigration Rules para 186(iv). The term 'employment' is not qualified and therefore is not limited to full-time or permanent employment and does not exclude self-employment. As to the meaning of 'employment' see para 93 note 35 ante.

26 Immigration Rules para 186(v).

27 Immigration Rules paras 186(vi), 187.

28 Immigration Rules para 187.

29 Immigration Rules para 188.

30 The Immigration Rules tacitly permit this status to be acquired by way of an in-country variation application because the requirements for an extension of stay do not include a requirement that the applicant must have entered the United Kingdom with United Kingdom ancestry entry clearance.

31 Immigration Rules paras 189, 190.

32 Immigration Rules para 191.

33 Immigration Rules para 192.

34 Immigration Rules para 193.

35 See the Immigration Rules paras 194-196 (spouses), 295J-295L (as added) (unmarried partners), 197-199 (children); and paras 122-123, 127 post. Spouses, partners and children may work without permission during their period of leave.

36 See the Immigration Rules Pt 9 (paras 320-324); and paras 136-138 post.

37 The requirements to be met by a person seeking leave to enter the United Kingdom as a seasonal worker at an agricultural camp are that he: (1) is a student in full-time education aged between 18-25 years inclusive, except if returning for another season at the specific invitation of a farmer; (2) holds a valid Home Office work card issued by the operator of a scheme approved by the Secretary of State; (3) intends to leave the United Kingdom at the end of his period of leave as a seasonal worker; (4) does not intend to take employment except in these terms; and (5) is able to maintain and accommodate himself and any dependants without recourse to public funds: Immigration Rules para 104 (amended by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 31) para 8). Provided the immigration officer is satisfied that each of these requirements is met, a person seeking leave to enter the United Kingdom as a seasonal worker at an agricultural camp may be admitted, with a condition restricting his freedom to take employment, until 30 November of the year in question: Immigration Rules para 105 (substituted by Statement of Changes in Immigration Rules (HC Paper (1997-98) no 338) para 2). Leave must, however, be refused if any such requirement is not met: Immigration Rules para 106. An applicant who:

68 (a) entered the United Kingdom as a seasonal worker with a valid Home Office work card under the Immigration Rules para 105;

69 (b) continues to meet the requirements of the Immigration Rules para 104 concerned with an intention to leave the United Kingdom and not to take other employment;

70 (c) can show that there is further farm work available under the approved scheme; and

71 (d) would not, as a result of an extension of stay, remain in the United Kingdom as a seasonal worker for longer than six months in aggregate or beyond 30 November of the year in question, whichever is the shorter period,

may be granted an extension of stay, subject to a condition restricting his freedom to take employment for a further period not exceeding three months or until 30 November of the year in question, whichever is the shorter period: Immigration Rules paras 107, 108 (para 107 amended by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 31) para 9). However, an extension must be refused if any of these requirements is not met (Immigration Rules para 109). As to the Secretary of State see para 2 ante. At the date at which this volume states the law there was no provision for the admission of spouses, unmarried partners or children of seasonal workers, but on 29 May 2002 the government announced plans to expand the seasonal workers scheme: see Home Office Press Release 140/2002.

38 The requirements to be met by a person seeking leave to enter the United Kingdom as a teacher or language assistant on an approved exchange scheme are that he: (1) is coming to an educational establishment in the United Kingdom under an exchange scheme approved by the Education Departments or administered by the Central Bureau for Educational Visits and Exchanges or the League for the Exchange of Commonwealth Teachers; (2) intends to leave the United Kingdom at the end of his exchange period; (3) does not intend to take employment except in these terms; (4) is able to maintain and accommodate himself and any dependants without recourse to public funds; and (5) holds a valid United Kingdom entry clearance for entry in this capacity: Immigration Rules para 110. Provided he is able to produce to the immigration officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity, a person seeking leave to enter the United Kingdom as a teacher or language assistant under an approved exchange scheme may be given leave to enter for a period not exceeding 12 months: Immigration Rules para 111. Leave must, however, be refused if a valid entry clearance is not produced: Immigration Rules para 112. An applicant who:

- 72 (a) entered the United Kingdom with a valid United Kingdom entry clearance as a teacher or language assistant;
- 73 (b) is still engaged in the employment for which his entry clearance was granted;
- 74 (c) is still required for the employment in question, as certified by the employer;
- 75 (d) continues to meet the requirements for entry contained in the Immigration Rules para 110 (see note 38 supra); and
- 76 (e) would not, as a result of an extension of stay, remain in the United Kingdom as an exchange teacher or language assistant for more than two years from the date on which he was first given leave to enter the United Kingdom in this capacity,

may be granted an extension of stay for a further period not exceeding 12 months: Immigration Rules paras 113, 114. However, an extension must be refused if any of these requirements is not met: Immigration Rules para 115. Teachers and language assistants on approved schemes may be joined or accompanied by their spouses and children under 18: see the Immigration Rules paras 122-124 (spouses), 125-127 (children); and paras 122, 127 post. Unmarried partners are not eligible to join or accompany partners with leave as exchange teachers or language assistants. Spouses and children may work without permission during their period of leave.

UPDATE

109-118 Admission of Persons for Employment or Business Purposes or as Investors or as Retired Persons of Independent Means

As to the requirements for an extension of stay to take employment for a Science and Engineering Graduate Scheme participant or International Graduates Scheme participant see the Immigration Rules para 131C (added by Statement of Changes in Immigration Rules (Cm 5829) (2003) para 2; substituted by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 4; and amended by Statement of Changes in Immigration Rules (Cm 7075) (2007) para 2).

112 Persons travelling to the United Kingdom for non-work permit employment

TEXT AND NOTES 1-20--Original Immigration Rules paras 144-151 deleted: Statement of Changes in Immigration Rules (Cm 7701) (2009) para 5. As to requirements for leave to enter, for an extension of stay, or for indefinite leave to remain, as a representative of an overseas business, see Immigration Rules paras 144-151 (added by Statement of Changes in Immigration Rules (Cm 7701) (2009) para 6).

NOTE 4--Head (3) now refers to his employer's spouse or civil partner: Immigration Rules para 159A(iii) (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 10). For the meaning of 'civil partner' see PARA 121.

NOTE 6--Immigration Rules para 170 deleted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 39(I).

TEXT AND NOTES 12-15--Immigration Rules para 173 deleted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 39(l).

NOTE 12--Immigration Rules para 156 deleted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 39(j). Immigration Rules para 159E amended: Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) para 17.

NOTE 16--Immigration Rules para 175 deleted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 39(l).

TEXT AND NOTE 17--Head (a). Now five years: Immigration Rules paras 142(i), 158(i), 159G(i), 167(i), 176(i), 184(i) (all amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) para 12).

NOTE 18--Immigration Rules paras 142(ii), 158(ii), 159G(ii), 167(ii), 176(ii), 184(ii) amended: Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) para 16. Immigration Rules para 176(ii) amended: Statement of Changes in Immigration Rules (Cm 6297) (2004) para 7.

TEXT AND NOTE 19--Also, head (d) has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom (see PARA 124), unless he is under the age of 18 or aged 65 or over at the time he makes his application: Immigration Rules paras 142(iii), 158(iii), 159G(iii), 167(iii), 176(iii), 184(iii) (all amended by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 2).

TEXT AND NOTE 24--Under head (i), proof is also required that any such grandparent is his blood grandparent or grandparent by reason of an adoption recognised by the laws of the United Kingdom relating to adoption: Immigration Rules para 186(iii) (amended by Statement of Changes in Immigration Rules (Cm 5949) (2003) para 5).

TEXT AND NOTES 28, 31--Now five years: Immigration Rules paras 187, 190 (both amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) para 12).

TEXT AND NOTES 30, 31--The person seeking an extension of stay in this category must also have been admitted to the United Kingdom in accordance with the Immigration Rules paras 186-188 or have been granted an extension of stay in this category and must meet the requirements of the Immigration Rules para 189: Immigration Rules paras 189, 190 (para 189 substituted, para 190 amended, by Statement of Changes in Immigration Rules (HC Paper (2003-04) no 1112) paras 9, 10).

TEXT AND NOTE 32--The requirements referred to are those of the Immigration Rules para 189: Immigration Rules para 191 (amended by Statement of Changes in Immigration Rules (HC Paper (2003-04) no 1112) para 11).

NOTE 33--Immigration Rules para 192 amended: Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 5.

TEXT AND NOTE 37--References to seasonal workers at agricultural camps are now to seasonal agricultural workers: Immigration Rules paras 104-109 (amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 2; and Statement of Changes in Immigration Rules (HC Paper (2002-03) no 1224) para 4).

NOTE 37--In head (1) for 'aged ... farmer' read '18 or over'; in head (2) the reference is to an immigration employment document in the form of a valid Home Office work document; head (4) refers to employment except as permitted by his work card and in these terms; in head (5) words 'and any dependants' omitted; and additional head (6) is not seeking leave to enter on a date less than three months from the date on which an earlier period of leave to enter or remain granted to him in this capacity expired:

Immigration Rules para 104 (amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 3; and Statement of Changes in Immigration Rules (HC Paper (2002-03) no 1224) para 5). Immigration Rules paras 105, 107, 108 substituted: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 1224) paras 6-8.

NOTE 38--Immigration Rules para 110 deleted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 39(g).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/C. ADMISSION OF PERSONS FOR EMPLOYMENT OR BUSINESS PURPOSES OR AS INVESTORS OR AS RETIRED PERSONS OF INDEPENDENT MEANS/113. Businessmen and self-employed persons.

113. Businessmen and self-employed persons.

Businessmen admitted to the United Kingdom¹ as visitors are free to transact business during their visit².

Any person seeking leave to enter the United Kingdom to establish himself in business³ must:

- 216 (1) hold a current entry clearance issued for the purpose⁴;
- 217 (2) have not less than £200,000 of his own money under his control and disposable in the United Kingdom which is held in his own name and not by a trust or other investment vehicle, and which he will be investing in the business in the United Kingdom⁵;
- 218 (3) have sufficient funds to maintain and accommodate himself and any dependants without recourse to employment (other than his work for the business) or public funds until such time as the business provides him with an income⁶;
- 219 (4) be actively involved full-time in trading or providing services, on his own account or in partnership, or in the promotion and management of the company as a director⁷;
- 220 (5) maintain a level of financial investment proportional to his interest in the business⁸;
- 221 (6) have either a controlling or equal interest in the business, and, if he has one, a partnership or directorship that does not amount to disguised employment⁹;
- 222 (7) be able to bear his share of the liabilities¹⁰;
- 223 (8) establish that there is a genuine need for his services and investment in the United Kingdom¹¹;
- 224 (9) show that his share of the profits of the business will be sufficient to maintain and accommodate himself and any dependants without recourse to employment (other than his work for the business) or public funds¹²; and
- 225 (10) not intend to supplement his business activities by taking or seeking employment in the United Kingdom other than his work for the business¹³.

A person who intends to take over, or join as a partner, an existing business, must additionally produce a written statement of the terms on which he is to take over or join the business, audited accounts of the business for previous years, and evidence that his services and investment will result in a net increase in the employment provided by the business to persons already in the United Kingdom to the extent of creating at least two new full-time posts¹⁴, while a person who intends to establish a new business in the United Kingdom must additionally

produce evidence that he will be bringing into the country sufficient funds of his own to establish the business and that the business will create full-time paid employment for at least two such persons¹⁵.

A person seeking leave to enter the United Kingdom to establish himself in business and who complies with such of the above requirements as are applicable to him may be granted leave to enter, subject to a condition restricting his freedom to take employment, if on arrival he can produce to the immigration officer a valid United Kingdom entry clearance for entry in this capacity¹⁶. Entry must, however, be refused if a valid entry clearance for entry in this capacity is not produced¹⁷. Entry is initially for a period not exceeding 12 months¹⁸, but an extension for a period of up to three years may be granted, on application, if the Secretary of State¹⁹ is satisfied that the applicant can show²⁰:

- 226 (a) that he entered with a valid entry clearance in this capacity²¹;
- 227 (b) audited accounts which show the precise financial position of the business and which confirm that he has invested no less than £200,000 of his own money directly into the business²²;
- 228 (c) that he continues to comply with the entry requirements relating to active involvement, levels of investment, controlling interests, legitimacy of employment, ability to bear liabilities, need for investment, ability to support himself and his dependants and absence of need to take other employment²³; and
- 229 (d) where he has established a new business, that new full-time paid employment has been created in the business for at least two persons settled in the United Kingdom²⁴, or, where he has taken over or joined an existing business, that his services and investment have resulted in a net increase in the employment provided by the business to such persons to the extent of creating at least two new full-time jobs²⁵.

An extension must, however, be refused if any of the applicable requirements is not met²⁶.

A person established in business who: (i) has spent a continuous period of four years in the United Kingdom in this capacity; (ii) meets the requirements relating to the extension of stay; and (iii) submits audited accounts for the first three years of trading and management accounts for the fourth year, may, on application, be granted indefinite leave to remain²⁷. However, indefinite leave must be refused if any of these requirements is not met²⁸.

There is provision for spouses, unmarried partners and children under the age of 18 to be granted leave²⁹.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 40. Transacting business includes attending meetings and briefings, fact-finding, negotiating or making contracts with United Kingdom businesses to buy or sell goods or services: see the Immigration Rules para 40; and para 99 ante. As to the distinction between transacting business and setting up in business see *Hossain v Immigration Officer, Heathrow* [1990] Imm AR 520, IAT (establishment of a United Kingdom company registered for VAT with the appellant as 'its driving force' goes beyond transacting business).

3 For these purposes, 'business' means an enterprise as a sole trader, a partnership, or a company registered in the United Kingdom: Immigration Rules paras 200, 211.

4 Immigration Rules para 201(xi). The condition of prior entry clearance is sometimes waived, and a decision to refuse leave as a business person must not be based solely on the lack of an entry clearance: see the *Immigration Directorates' Instructions* Chapter 6 (Businessmen, self-employed persons, investors, writers, composers and artists) Section 1 paragraph 4.2 (November 2000).

5 Immigration Rules para 201(ii). See *R v Immigration Appeal Tribunal, ex p Kwok on Tong* [1981] Imm AR 214, QBD. To be disposable in the United Kingdom, money must be immediately available for investment in the business, and for this purpose money invested in property does not usually count: *Entry Clearance Officer,*

Rome v Rahman [1991] Imm AR 102. The applicant must be the investor and not 'fronting' for someone else: *R v Immigration Appeal Tribunal, ex p Peikazadi* [1979-1980] Imm AR 191.

This requirement is not satisfied by the inheritance of an interest in a United Kingdom business even if that interest is worth more than £200,000, since that is capital already in the business not capital of the appellant's own which is being brought into it: *R v Immigration Appeal Tribunal, ex p Rahman* [1987] Imm AR 313, CA.

It is not sufficient for part of the money to go into the business and part to go into living accommodation (*Patel v Entry Clearance Officer, Nairobi* [1987] Imm AR 116), and the value of any premises which may be used for residential purposes will be deducted from the investment (see the *Immigration Directorates' Instructions* Chapter 6 (Businessmen, self-employed persons, investors, writers, composers and artists) Section 1 Annex A paragraph 1.4 (November 2000)).

A director's loan is not an acceptable method of putting money into the business, unless it is unsecured and fully subordinate to all third party creditors; nor is investment from or through an offshore company: see the *Immigration Directorates' Instructions* Chapter 6 (Businessmen, self-employed persons, investors, writers, composers and artists) Section 1 Annex A paragraph 1.1 (November 2000).

6 Immigration Rules para 201(iii). As to the meaning of 'employment' see para 93 note 35 ante. For the meaning of 'public funds' see para 99 note 8 ante.

7 Immigration Rules para 201(iv). Where a director works under the direction of others, it may be disguised employment: *Singh v Secretary of State for the Home Department* [1972] Imm AR 154.

8 Immigration Rules para 201(v). See also the *Immigration Directorates' Instructions* Chapter 6 (Businessmen, self-employed persons, investors, writers, composers and artists) Section 1 Annex A (November 2000).

9 Immigration Rules para 201(vi). See *R v Immigration Appeal Tribunal, ex p Kwok on Tong* [1981] Imm AR 214, QBD. See also *Singh v Secretary of State for the Home Department* [1972] Imm AR 154 (director on salary with small shareholding, removable by majority shareholders, was really a paid employee). See further the *Immigration Directorates' Instructions* Chapter 6 (Businessmen, self-employed persons, investors, writers, composers and artists) Section 1 Annex A paragraph 1.2 (November 2000).

10 Immigration Rules para 201(vii). 'Liabilities' refers only to those liabilities which a business is reasonably expected to incur, and the applicant need not guard against unforeseen liabilities: *R v Immigration Appeal Tribunal, ex p Hirani* (2 July 1981, unreported), QBD; see also the *Immigration Directorates' Instructions* Chapter 6 (Businessmen, self-employed persons, investors, writers, composers and artists) Section 1 Annex C (November 2000).

11 Immigration Rules para 201(viii). An element of public economic interest may be relevant (*Sayed v Secretary of State for the Home Department* [1987] Imm AR 303).

12 Immigration Rules para 201(ix). The applicant must produce a business plan with financial projections: see the *Immigration Directorates' Instructions* Chapter 6 (Businessmen, self-employed persons, investors, writers, composers and artists) Section 1 Annex A paragraph 2 (November 2000).

13 Immigration Rules para 201(x).

14 Immigration Rules paras 201(i), 202. The use of self-employed contractors is not sufficient: *Sayed v Secretary of State for the Home Department* [1987] Imm AR 303.

15 Immigration Rules paras 201(i), 203. There must be a net increase in employment: see the *Immigration Directorates' Instructions* Chapter 6 (Businessmen, self-employed persons, investors, writers, composers and artists) Section 1 Annex A paragraph 4 (November 2000).

16 Immigration Rules paras 201(xi), 204.

17 Immigration Rules paras 201(xi), 205. See, however, note 4 supra.

18 Immigration Rules para 204.

19 As to the Secretary of State see para 2 ante.

20 Immigration Rules para 207.

21 Immigration Rules para 206(i). See, however, note 4 supra.

22 Immigration Rules para 206(ii).

23 Immigration Rules para 206(iii)-(vii), (ix), (x). As to these requirements see the Immigration Rules para 201(iv)-(x); and the text and notes 7-13 *supra*.

24 Immigration Rules para 206(viii)(a).

25 Immigration Rules para 206(viii)(b).

26 Immigration Rules para 208. If the Home Office is not satisfied that all the requirements are met but outright refusal is inappropriate, it may grant a further 12 months' leave to enter: see the *Immigration Directorates' Instructions* Chapter 6 (Businessmen, self-employed persons, investors, writers, composers and artists) Section 1 paragraph 4.6 (November 2000).

27 Immigration Rules para 209.

28 Immigration Rules para 210.

29 See the Immigration Rules paras 240-242 (spouses), 295J-295L (as added) (unmarried partners), 243-245 (children); and paras 122-123, 127 *post*. Spouses, partners and children may work without permission during their period of leave.

UPDATE

109-118 Admission of Persons for Employment or Business Purposes or as Investors or as Retired Persons of Independent Means

As to the requirements for an extension of stay to take employment for a Science and Engineering Graduate Scheme participant or International Graduates Scheme participant see the Immigration Rules para 131C (added by Statement of Changes in Immigration Rules (Cm 5829) (2003) para 2; substituted by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 4; and amended by Statement of Changes in Immigration Rules (Cm 7075) (2007) para 2).

113 Businessmen and self-employed persons

TEXT AND NOTES 1-26--Immigration Rules paras 200-208 deleted except in so far as relevant to Immigration Rules para 209: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) para 17(iv).

NOTE 3--Immigration Rules para 211 deleted: Statement of Changes in Immigration Rules (HC Paper (2006-07) no 130) para 2.

TEXT AND NOTE 27--Head (i) now refers to a continuous period of five years; and head (iii) refers to the first four years of trading and management accounts for the fifth year: Immigration Rules para 209 (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) paras 12, 16, 20). Also, head (iv) has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom (see PARA 124), unless he is under the age of 18 or aged 65 or over at the time he makes his application: Immigration Rules para 209 (amended by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 7).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/C. ADMISSION OF PERSONS FOR EMPLOYMENT OR BUSINESS PURPOSES OR AS INVESTORS OR AS RETIRED PERSONS OF INDEPENDENT MEANS/114. Businessmen relying on European Community Association Agreements.

114. Businessmen relying on European Community Association Agreements.

Nationals of states which have concluded Association Agreements with the European Community¹, who seek to come to the United Kingdom² to establish themselves in a business³, must:

- 230 (1) hold a valid United Kingdom entry clearance for the purpose⁴;
- 231 (2) be investing in the business money which is under his control and sufficient to establish himself in business in the United Kingdom⁵;
- 232 (3) have sufficient additional funds to maintain and accommodate himself and any dependants without recourse to employment (other than his work for the business) or to public funds until such time as his business provides him with an income⁶;
- 233 (4) be entitled to a share of the profits of the business sufficient to maintain and accommodate himself and any dependants without recourse to employment (other than his work for the business) or to public funds⁷;
- 234 (5) not intend to supplement his business activities by taking or seeking employment in the United Kingdom other than his work for the business⁸; and
- 235 (6) if he is taking over an existing company, or taking over or joining an existing business, show a written statement of the terms on which he is to take over (or join) the business and audited accounts for the business for previous years⁹.

A person who intends to establish himself in a company in the United Kingdom which he effectively controls must additionally show:

- 236 (a) that he is a national of Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia or Slovenia¹⁰;
- 237 (b) that he will have a controlling interest in the company¹¹;
- 238 (c) that he will be actively involved in the promotion and management of the company¹²;
- 239 (d) that the company will be registered in the United Kingdom and be trading or providing services in the United Kingdom¹³; and
- 240 (e) that the company will be the owner of the assets of the business¹⁴.

A person who intends to establish himself in self employment or in partnership in the United Kingdom must additionally show:

- 241 (i) that he is a national of Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania or Slovakia¹⁵;
- 242 (ii) that he will be actively involved in trading or providing services on his own account or in partnership in the United Kingdom¹⁶;
- 243 (iii) that he, or he together with his partners, will be the owner of the assets of the business¹⁷; and
- 244 (iv) in the case of a partnership, that his part in the business will not amount to disguised employment¹⁸.

A person seeking leave to enter the United Kingdom to establish himself in business and who complies with such of the above requirements as are applicable to him may be granted leave to enter, subject to a condition restricting his freedom to take employment, if on arrival he can produce to the immigration officer a valid United Kingdom entry clearance for entry in this capacity¹⁹. Entry must, however, be refused if a valid entry clearance for entry in this capacity is not produced²⁰. Entry is initially for a period not exceeding 12 months²¹, but an extension of

stay, for a period of up to three years and subject to a restriction on employment, may be granted, on application, if the Secretary of State²² is satisfied that the applicant can show²³:

- 245 (A) that he has established himself in business in the United Kingdom²⁴;
- 246 (B) that he continues to comply with the entry requirements relating to nationality²⁵, active involvement²⁶, asset ownership²⁷, ability to support himself and his dependants²⁸ and absence of need to take other employment²⁹;
- 247 (C) that, if he has established himself in the United Kingdom in a company he effectively controls, he continues to comply with the entry requirements relating to having a controlling interest³⁰ and registration and trading in the United Kingdom³¹, and that, if he has established himself as a sole trader or in partnership in the United Kingdom, he continues to comply with the entry requirement relating to not being in disguised employment³²; and
- 248 (D) the current financial position in the form of audited accounts for the company or, as the case may be, business³³.

An extension must, however, be refused if any of the applicable requirements is not met³⁴.

A person established in business who has spent a continuous period of four years in the United Kingdom in this capacity (and is still so engaged), has met the applicable requirements of the rules governing extension of stay throughout those four years, and submits audited accounts for the first three years of trading and management accounts for the fourth year, may, on application, be granted indefinite leave to remain³⁵. However, indefinite leave must be refused if any of these requirements is not met³⁶.

Persons lawfully in the United Kingdom in another capacity may apply to remain under the European Community Association Agreements³⁷.

There is provision for spouses, unmarried partners and children under the age of 18 to be granted leave³⁸.

1 Association Agreements are concluded under Treaty Establishing the European Communities (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) and are binding on the institutions of the Community and on member states. The European Union has entered Association Agreements with Turkey, Hungary, Poland, Romania, Bulgaria, Slovenia, the Czech Republic, Croatia, Slovakia, Estonia, Latvia and Lithuania, which provide rights of establishment on terms no less favourable than those for own nationals and companies. The rights of establishment are of direct effect: see Case C-262/96 *Sürül v Bundesanstalt für Arbeit* [1999] ECR I-2685, [1999] All ER (D) 462. The right of establishment presupposes that the person has a right to enter and remain in the host member state: Case C-63/99 *R (on the application of Gloszczuk) v Secretary of State for the Home Department* [2002] All ER (EC) 353, sub nom *R v Secretary of State for the Home Department, ex p Gloszczuk* [2001] ECR I-6369, ECJ.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 For the meaning of 'business' see para 113 note 3 ante.

4 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 212(vi).

5 Immigration Rules para 212(ii).

6 Immigration Rules para 212(iii). As to the meaning of 'employment' see para 93 note 35 ante. For the meaning of 'public funds' see para 99 note 8 ante.

7 Immigration Rules para 212(iv).

8 Immigration Rules para 212(v).

9 Immigration Rules paras 212(i), 213(vi), 214(v).

10 Immigration Rules paras 212(i), 213(i) (para 213(i) substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 17).

11 Immigration Rules paras 212(i), 213(ii).

12 Immigration Rules paras 212(i), 213(iii).

13 Immigration Rules paras 212(i), 213(iv).

14 Immigration Rules paras 212(i), 213(v).

15 Immigration Rules paras 212(i), 214(i) (para 214(i) substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 18).

16 Immigration Rules paras 212(i), 214(ii).

17 Immigration Rules paras 212(i), 214(iii).

18 Immigration Rules paras 212(i), 214(iv).

19 Immigration Rules paras 212(vi), 215. Because the Association Agreement provisions are of direct effect, provided the person can show that he is establishing or has established a genuine business, the immigration officer has no discretion to refuse, even where requirements of the United Kingdom rules are not met: see Case C-262/96 *Sürül v Bundesanstalt für Arbeit* [1999] ECR I-2685, [1999] All ER (D) 462.

20 Immigration Rules paras 212(vi), 216. The entry clearance requirement was upheld in Case C-63/99 *R (on the application of Gloszczuk) v Secretary of State for the Home Department* [2002] All ER (EC) 353, sub nom *R v Secretary of State for the Home Department, ex p Gloszczuk* [2001] ECR I-6369, ECJ.

21 Immigration Rules para 215.

22 As to the Secretary of State see para 2 ante.

23 Immigration Rules para 220.

24 Immigration Rules para 217(i).

25 Immigration Rules paras 217(iv), 218(i), 219(i) (paras 218(i), 219(i) substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) paras 19, 20). As to these requirements see the Immigration Rules paras 213(i), 214(i) (both as substituted); and the text and notes 10, 15 supra.

26 Immigration Rules paras 217(iv), 218(ii), 219(ii). As to these requirements see the Immigration Rules paras 213(iii), 214(ii); and the text and notes 12, 16 supra.

27 Immigration Rules paras 217(iv), 218(v), 219(iii). As to these requirements see the Immigration Rules paras 213(v), 214(iii); and the text and notes 14, 17 supra.

28 Immigration Rules para 217(ii). As to this requirement see the Immigration Rules para 212(iv); and the text and note 7 supra.

29 Immigration Rules para 217(iii). As to this requirement see the Immigration Rules para 212(v); and the text and note 8 supra.

30 Immigration Rules paras 217(iv), 218(iii). As to this requirement see the Immigration Rules para 213(ii); and the text and note 11 supra.

31 Immigration Rules paras 217(iv), 218(iv). As to this requirement see the Immigration Rules para 213(iv); and the text and note 13 supra.

32 Immigration Rules paras 217(iv), 219(iv). As to this requirement see the Immigration Rules para 214(iv); and the text and note 18 supra.

33 Immigration Rules paras 217(iv), 218(vi), 219(v).

34 Immigration Rules para 221.

35 Immigration Rules para 222.

36 Immigration Rules para 223.

37 If there is no requirement that the person entered with entry clearance as a business person under the Association Agreements. But if a business is set up while the person is present unlawfully, the United Kingdom is entitled to require him to leave the country and apply for entry clearance abroad: see Case C-63/99 *R (on the application of Gloszczuk) v Secretary of State for the Home Department* [2002] All ER (EC) 353, sub nom *R v Secretary of State for the Home Department, ex p Gloszczuk* [2001] ECR I-6369, ECJ.

38 See the Immigration Rules paras 240-242 (spouses), 295J-295L (as added) (unmarried partners), 243-245 (children); and paras 122-123, 127 post. Spouses, partners and children may work without permission during their period of leave.

UPDATE

109-118 Admission of Persons for Employment or Business Purposes or as Investors or as Retired Persons of Independent Means

As to the requirements for an extension of stay to take employment for a Science and Engineering Graduate Scheme participant or International Graduates Scheme participant see the Immigration Rules para 131C (added by Statement of Changes in Immigration Rules (Cm 5829) (2003) para 2; substituted by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 4; and amended by Statement of Changes in Immigration Rules (Cm 7075) (2007) para 2).

114 Businessmen relying on European Community Association Agreements

TEXT AND NOTES 1-34--Immigration Rules paras 211-221 deleted: Statement of Changes in Immigration Rules (HC Paper (2006-07) no 130) para 2.

TEXT AND NOTES 35, 36--Notwithstanding the Immigration Rules para 5 (see PARA 225), the Immigration Rules paras 222-223 apply to a person who is entitled to remain in the United Kingdom by virtue of the provisions of the Immigration (European Economic Area) Regulations 2006, SI 2006/1003 (see PARA 225 et seq): Immigration Rules para 223A (added by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 130) para 5).

TEXT AND NOTE 35--Immigration Rules para 222 replaced by Immigration Rules paras 222-222C (substituted by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 130) para 3).

Indefinite leave to remain may be granted, on application, to a person established in business provided he (1) is a national of Bulgaria or Romania; and (2) entered the United Kingdom with a valid United Kingdom entry clearance as a person intending to establish himself in business under the provisions of an EC Association Agreement; and (3) was granted an extension of stay before 1 January 2007 in order to remain in business under the provisions of the Agreement; and (4) established himself in business in the United Kingdom, spent a continuous period of five years in the United Kingdom in this capacity and is still so engaged; and (5) met the requirements of the Immigration Rules para 222A throughout the period of five years; (6) submits audited accounts for the first four years of trading and management accounts for the fifth year; and (7) has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom (see PARA 124), unless he is under the age of 18 or aged 65 or over at the time he makes his application: Immigration Rules para 222 (amended by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 9). The requirements mentioned in head (5) are that throughout the period of five years (a) the applicant's share of the profits of the business has been sufficient to maintain and accommodate himself and any dependants without recourse to

employment (other than his work for the business) or to public funds; and (b) he has not supplemented his business activities by taking or seeking employment in the United Kingdom (other than his work for the business); and (c) he has satisfied the requirements in the Immigration Rules para 222B or 222C: Immigration Rules para 222A.

Where the applicant has established himself in a company in the United Kingdom which he effectively controls, the requirements for the purpose of head (c) are that (i) the applicant has been actively involved in the promotion and management of the company; and (ii) he has had a controlling interest in the company; and (iii) the company was registered in the United Kingdom and has been trading or providing services in the United Kingdom; and (iv) the company owned the assets of the business: Immigration Rules para 222B. Where the applicant has established himself as a sole trader or in a partnership in the United Kingdom, the requirements for the purpose of head (c) are that (A) the applicant has been actively involved in trading or providing services on his own account or in a partnership in the United Kingdom; and (B) the applicant owned, or together with his partners owned, the assets of the business; and (c) in the case of a partnership, the applicant's part in the business did not amount to disguised employment: Immigration Rules para 222C.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/C. ADMISSION OF PERSONS FOR EMPLOYMENT OR BUSINESS PURPOSES OR AS INVESTORS OR AS RETIRED PERSONS OF INDEPENDENT MEANS/115. Investors.

115. Investors.

The requirements to be met by a person seeking leave to enter the United Kingdom¹ as an investor are that he:

- 249 (1) has money under his control and disposable in the United Kingdom, amounting to no less than £1 million²;
- 250 (2) intends to invest not less than £750,000 of his capital in the United Kingdom by way of United Kingdom government bonds, share capital or loan capital in active and trading registered companies (other than those principally engaged in property investment and excluding investment by way of deposits with a bank, building society or other enterprise whose normal course of business includes the acceptance of deposits)³;
- 251 (3) intends to make the United Kingdom his main home⁴;
- 252 (4) is able to maintain and accommodate himself and any dependants without taking employment (other than self-employment or business) or having recourse to public funds⁵; and
- 253 (5) holds a current entry clearance for that purpose⁶.

A person seeking leave to enter the United Kingdom as an investor who complies with these requirements may be granted leave to enter, subject to a condition restricting his right to take employment, provided he is able to produce to the immigration officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity⁷. Entry must, however, be refused if a valid entry clearance for entry in this capacity is not produced⁸. Entry is initially for a period not exceeding 12 months⁹, but an extension of stay, for a period of up to three years and subject to a restriction on employment, may be granted, on application, if the Secretary of State¹⁰ is

satisfied that the applicant has entered the United Kingdom with a valid United Kingdom entry clearance as an investor¹¹ and continues to meet or, where applicable, has made good on the intentions set out in, the requirements for entry¹². An extension must, however, be refused if any of the applicable requirements is not met¹³.

A person admitted as an investor who has spent a continuous period of four years in the United Kingdom in that capacity and has throughout that period met, and continues to meet, the requirements for extension of stay, including the requirement as to the investment of £750,000, may, on application, be granted indefinite leave to remain¹⁴. Indefinite leave must, however, be refused if any of the requirements is not met¹⁵.

Provision is made for the admission of the spouse, unmarried partner and children of a person admitted as an investor¹⁶.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 224(i). For the meaning of 'under his control and disposable in the United Kingdom' see para 113 note 5 ante.

3 Immigration Rules para 224(ii). See further the *Immigration Directorates' Instructions* Chapter 6 (Businessmen, self-employed persons, investors, writers, composers and artists) Section 3 Annex G (November 2000).

4 Immigration Rules para 224(iii). See also *Immigration Directorates' Instructions* Chapter 6 (Businessmen, self-employed persons, investors, writers, composers and artists) Section 3 Annex G paragraph 2 (November 2000).

5 Immigration Rules para 224(iv). As to the meaning of 'employment' see para 93 note 35 ante. For the meaning of 'public funds' see para 99 note 8 ante.

6 Immigration Rules para 224(v). As to entry clearance see para 96 ante. For the position regarding EEA nationals see para 225 et seq post.

7 Immigration Rules para 225.

8 Immigration Rules para 226.

9 Immigration Rules para 225.

10 As to the Secretary of State see para 2 ante.

11 Immigration Rules paras 227(i), 228.

12 Immigration Rules paras 227(ii)-(v), 228. As to the requirements for entry, and the intentions which a person seeking entry in this capacity must demonstrate, see the Immigration Rules para 224(ii)-(iv); and the text and notes 1-5 supra.

13 Immigration Rules para 229.

14 Immigration Rules para 230.

15 Immigration Rules para 231.

16 See the Immigration Rules paras 240-242 (spouses), 295J-295L (as added) (unmarried partners), 243-245 (children); and paras 122-123, 127 post. Spouses, partners and children may work without permission during their period of leave.

UPDATE

109-118 Admission of Persons for Employment or Business Purposes or as Investors or as Retired Persons of Independent Means

As to the requirements for an extension of stay to take employment for a Science and Engineering Graduate Scheme participant or International Graduates Scheme participant see the Immigration Rules para 131C (added by Statement of Changes in Immigration Rules (Cm 5829) (2003) para 2; substituted by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 4; and amended by Statement of Changes in Immigration Rules (Cm 7075) (2007) para 2).

115 Investors

TEXT AND NOTES 1-13--Immigration Rules paras 224-229 deleted except in so far as relevant to Immigration Rules para 230: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) para 17(vi).

TEXT AND NOTE 14--Immigration Rules para 230 amended: Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) paras 12, 16; Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 10. Now refers to a continuous period of five years: Immigration Rules para 230. In order to be granted indefinite leave to remain, a person so admitted must also have sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom (see PARA 124), unless he is under the age of 18 or aged 65 or over at the time he makes his application: Immigration Rules para 230.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/C. ADMISSION OF PERSONS FOR EMPLOYMENT OR BUSINESS PURPOSES OR AS INVESTORS OR AS RETIRED PERSONS OF INDEPENDENT MEANS/116. Innovators.

116. Innovators.

Special provision exists in respect of persons wishing to enter the United Kingdom¹ as innovators who would not necessarily qualify for entry under the other business categories². The scheme differs from the general provisions for admission as a businessman or investor³ inasmuch as there is no requirement that a set amount be invested, the applicant need not be investing his own personal money, and the application is assessed on the basis of the economic benefits to the United Kingdom that the proposed business would bring⁴.

A person seeking leave to enter as an innovator must show that:

- 254 (1) the proposed business will lead to the creation of two full-time jobs or an equivalent number of part-time jobs;
- 255 (2) he will maintain a 5 percent shareholding of the equity capital;
- 256 (3) the company will be registered in the United Kingdom;
- 257 (4) he is able to maintain and accommodate himself and any dependants without recourse to other employment or public funds until the business provides an income; and
- 258 (5) there is enough money available (or agreed in principle) to finance the business for the first six months⁵.

Under the scheme, innovators may be granted leave to enter or remain for an initial 18 months, which may be extended to a total of four years on application, after which innovators may apply for settlement⁶.

- 1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.
- 2 The scheme for innovators was set up by the Home Office on 5 September 2000 as a two-year pilot, and is outside the Immigration Rules. Guidance on the criteria for qualification as an innovator is published by the Immigration and Nationality Directorate. On 16 September 2002, the Home Office announced that, following the success of the pilot, the scheme is to be extended indefinitely: see Home Office Press Release 255/2002. The scheme is aimed at entrepreneurs who wish to enter the United Kingdom to set up businesses, particularly in the areas of science and technology, including e-commerce, which will create exceptional economic benefits for the United Kingdom. As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395). As to the Immigration and Nationality Directorate see para 1 ante.
- 3 See paras 113-115 ante.
- 4 See the Immigration and Nationality Directorate publication *Information about Innovators*. The assessment is carried out using a system whereby points are awarded for personal characteristics (experience, qualifications and proven ability); business plan (technical, commercial and financial viability); and economic benefits (numbers of jobs created and level of skills, innovative aspects).
- 5 See the Immigration and Nationality Directorate publication *Information about Innovators*.
- 6 See the Immigration and Nationality Directorate publication *Information about Innovators*.

UPDATE

109-118 Admission of Persons for Employment or Business Purposes or as Investors or as Retired Persons of Independent Means

As to the requirements for an extension of stay to take employment for a Science and Engineering Graduate Scheme participant or International Graduates Scheme participant see the Immigration Rules para 131C (added by Statement of Changes in Immigration Rules (Cm 5829) (2003) para 2; substituted by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 4; and amended by Statement of Changes in Immigration Rules (Cm 7075) (2007) para 2).

116 Innovators

TEXT AND NOTES--As to indefinite leave to remain for an innovator and refusal of such leave see Immigration Rules paras 210G, 210GH (added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 9; Immigration Rules para 210G amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) para 23; and Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 8).

For provision for highly skilled migrants who wish to work or become self-employed in the United Kingdom see now Immigration Rules Pt 6A (paras 245AA-245ZR); and PARA 109.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/C. ADMISSION OF PERSONS FOR EMPLOYMENT OR BUSINESS PURPOSES OR AS INVESTORS OR AS RETIRED PERSONS OF INDEPENDENT MEANS/117. Retired persons of independent means.

117. Retired persons of independent means.

A person seeking to enter the United Kingdom¹ as a retired person of independent means must:

- 259 (1) be at least 60 years old²;
- 260 (2) have under his control and disposable in the United Kingdom an income of not less than £25,000 per year³;
- 261 (3) be able and willing to maintain and accommodate himself and any dependants indefinitely in the United Kingdom from his own resources without taking employment or having recourse to public funds⁴;
- 262 (4) be able to demonstrate a close connection with the United Kingdom⁵;
- 263 (5) intend to make the United Kingdom his main home⁶; and
- 264 (6) hold a current entry clearance for the purpose⁷.

A person seeking leave to enter the United Kingdom as a retired person of independent means who complies with these requirements may be granted leave to enter, subject to a condition restricting his right to take employment, provided he is able to produce to the immigration officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity⁸. Entry must, however, be refused if a valid entry clearance is not produced⁹. Entry is initially for a period not exceeding four years¹⁰, but an extension of stay, for a period of up to four years and subject to a restriction on employment, may be granted, on application, if the Secretary of State¹¹ is satisfied that the applicant has entered the United Kingdom with a valid United Kingdom entry clearance as a retired person of independent means¹², continues to meet the requirements for entry¹³, and has made the United Kingdom his main home¹⁴. An extension must, however, be refused if any of these requirements is not met¹⁵. A person admitted as a retired person of independent means who has spent a continuous period of four years in the United Kingdom in that capacity and has throughout that period met, and continues to meet, the requirements for extension of stay may, on application, be granted indefinite leave to remain¹⁶. Indefinite leave must, however, be refused if any of those requirements is not met¹⁷.

Provision is made for the admission of the spouse, unmarried partner and children of a person admitted as an investor¹⁸.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 263(i). For the position regarding EEA nationals see para 225 et seq post.

3 Immigration Rules para 263(ii). For the meaning of 'under his control and disposable in the United Kingdom' see para 113 note 5 ante; and see also *R v Immigration Appeal Tribunal, ex p Chiew* [1981] Imm AR 102, QBD (this requirement is concerned not with ensuring a regular supply of funds, nor with the probability of that supply continuing, but rather with the necessary means for supporting a person in the foreseeable future, which should be under his control). The income must be net of overseas tax: see the *Immigration Directorates' Instructions* Chapter 7 (Other Categories) Section 4 Annex G paragraph 2.1 (December 2000).

4 Immigration Rules para 263(iii). As to the meaning of 'employment' see para 93 note 35 ante. For the meaning of 'public funds' see para 99 note 8 ante.

5 Immigration Rules para 263(iv). A close connection may include the presence of a close relative, periods of previous residence, long standing possession of substantial property, employment with a British company involving frequent business visits to Britain, or letters of support from eminent British citizens, but possession of British nationality (other than British citizenship) does not amount per se to a close connection: see the *Immigration Directorates' Instructions* Chapter 7 (Other Categories) Section 4 Annex H paragraph 2 (December 2000). Relatives may be relatives by blood or affinity: *Fung v Entry Clearance Officer, Hong Kong* [1984] Imm AR 159. As to previous residence see *R v Immigration Appeal Tribunal, ex p Zandfani* [1984] Imm AR 213.

6 Immigration Rules para 263(v).

7 Immigration Rules para 263(vi). As to entry clearance see para 96 ante.

8 Immigration Rules para 264.

9 Immigration Rules para 265.

10 Immigration Rules para 264. British nationals other than British citizens, and British protected persons, should be given indefinite leave to remain immediately: see the *Immigration Directorates' Instructions* Chapter 7 (Other Categories) Section 4 paragraph 2.3 (December 2000).

11 As to the Secretary of State see para 2 ante.

12 Immigration Rules paras 266(i), 267.

13 Immigration Rules paras 266(ii), 267. As to the requirements referred to in the text see the Immigration Rules para 263(ii)-(v); and the text and notes 3-6 supra.

14 Immigration Rules paras 266(iii), 267.

15 Immigration Rules para 268.

16 Immigration Rules para 269.

17 Immigration Rules para 270 (amended by Statement of Changes in Immigration Rules (Cm 3365) (1996) para 5).

18 See the Immigration Rules paras 271-273 (spouses), 295J-295L (as added) (unmarried partners), 274-276 (children); and paras 122-123, 127 post.

UPDATE

109-118 Admission of Persons for Employment or Business Purposes or as Investors or as Retired Persons of Independent Means

As to the requirements for an extension of stay to take employment for a Science and Engineering Graduate Scheme participant or International Graduates Scheme participant see the Immigration Rules para 131C (added by Statement of Changes in Immigration Rules (Cm 5829) (2003) para 2; substituted by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 4; and amended by Statement of Changes in Immigration Rules (Cm 7075) (2007) para 2).

117 Retired persons of independent means

TEXT AND NOTES 1-10--Immigration Rules paras 263-265 deleted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 39(o).

TEXT AND NOTES 11-15--Immigration Rules paras 266-268 substituted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) paras 82-84.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/C. ADMISSION OF PERSONS FOR EMPLOYMENT OR BUSINESS PURPOSES OR AS INVESTORS OR AS RETIRED PERSONS OF INDEPENDENT MEANS/118. Writers, composers and artists.

118. Writers, composers and artists.

A person seeking leave to enter the United Kingdom¹ as a writer, composer² or artist³ must:

- 265 (1) have established himself outside the United Kingdom as a writer, composer or artist primarily engaged in producing original work which has been published⁴, performed or exhibited for its literary, musical or artistic merit⁵;
- 266 (2) not intend to work except as related to his self-employment as a writer, composer or artist⁶;
- 267 (3) have for the preceding year been able to maintain and accommodate himself and any dependants without working except as a writer, composer or artist⁷;
- 268 (4) be able to maintain and accommodate himself and any dependants from his own resources, without working except as a writer, composer or artist and without recourse to public funds⁸; and
- 269 (5) hold a current entry clearance for that purpose⁹.

A person seeking leave to enter the United Kingdom as a writer, composer or artist who complies with these requirements may be granted leave to enter, subject to a condition restricting his right to take employment, provided he is able to produce to the immigration officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity¹⁰. Entry must, however, be refused if a valid entry clearance is not produced¹¹. Entry is initially for a period not exceeding 12 months¹², but an extension of stay, for a period not exceeding three years and subject to a restriction on employment, may be granted, on application, if the Secretary of State¹³ is satisfied that the applicant has entered the United Kingdom with a valid United Kingdom entry clearance as a writer, composer or artist¹⁴ and continues to meet the requirements set out in heads (2) to (4) above¹⁵. An extension must, however, be refused if any of these requirements is not met¹⁶. A person admitted as a writer, composer or artist who has spent a continuous period of four years in the United Kingdom in that capacity and has throughout that period met the requirements for extension of stay may, on application, be granted indefinite leave to remain¹⁷. Indefinite leave must, however, be refused if any of those requirements is not met¹⁸.

Provision is made for the admission of the spouse, unmarried partner and children of a person admitted as a writer, composer or artist¹⁹.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Composers may conduct their work provided most of their income is derived from composing: see the *Immigration Directorates' Instructions* Chapter 6 (Businessmen, self-employed persons, investors, writers, composers and artists) Section 4 Annex J paragraph 3 (November 2000).

3 There is a distinction between painters and sculptors, who are artists, and performing artists such as singers, who are categorised as entertainers and so require work permits: *Secretary of State for the Home Department v Stillwaggon* [1975] Imm AR 132. As to work permits for entertainers see para 109 ante. As to applications for work permits see para 110 ante.

4 Publication does not include publication exclusively in newspapers or magazines, effectively excluding persons who work wholly or mainly as freelance journalists, who would have to obtain work permits: Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 232(i).

5 Immigration Rules para 232(i).

6 Immigration Rules para 232(ii).

7 Immigration Rules para 232(iii). At least part of the resources must be derived from work as a writer, composer or artist, although the income to be derived from work as a writer or artist need not in itself be enough to cover all anticipated expenses: *Boehm-Bradley v Visa Officer, Washington* [1986] Imm AR 305 (decided under the previous rules). The Immigration Rules do not exclude reliance on private income provided that earned income is derived solely from creative art. See, however, *Secretary of State for the Home Department v Jones* [1978] Imm AR 161 (reliance upon money sent by family abroad to cover living expenses during 18-month period when the playwright earned no income disqualified applicant).

8 Immigration Rules para 232(iv). See also *Immigration Directorates' Instructions* Chapter 6 (Businessmen, self-employed persons, investors, writers, composers and artists) Section 4 Annex K (November 2000). For the meaning of 'public funds' see para 99 note 8 ante.

9 Immigration Rules para 232(v). As to entry clearance see para 96 ante.

10 Immigration Rules para 233.

11 Immigration Rules para 234.

12 Immigration Rules para 233.

13 As to the Secretary of State see para 2 ante.

14 Immigration Rules paras 235(i), 236. Thus persons given limited leave to enter or remain in some other capacity will be refused extension of stay or leave to remain as writers, composers or artists.

15 Immigration Rules paras 235(ii), 236. As to the requirements referred to in the text see the Immigration Rules para 232(ii)-(iv); and the text and notes 6-8 supra.

16 Immigration Rules para 237.

17 Immigration Rules para 238.

18 Immigration Rules para 239.

19 See the Immigration Rules paras 240-242 (spouses), 295J-295L (as added) (unmarried partners), 243-245 (children); and paras 122-123, 127 post. Spouses, partners and children may work without permission during their period of leave.

UPDATE

109-118 Admission of Persons for Employment or Business Purposes or as Investors or as Retired Persons of Independent Means

As to the requirements for an extension of stay to take employment for a Science and Engineering Graduate Scheme participant or International Graduates Scheme participant see the Immigration Rules para 131C (added by Statement of Changes in Immigration Rules (Cm 5829) (2003) para 2; substituted by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 4; and amended by Statement of Changes in Immigration Rules (Cm 7075) (2007) para 2).

118 Writers, composers and artists

TEXT AND NOTES 1-16--Immigration Rules paras 232-237 deleted except in so far as relevant to Immigration Rules para 238: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) para 17(vii). For provision for highly skilled migrants who wish to work or become self-employed in the United Kingdom see Immigration Rules Pt 6A (paras 245AA-245ZR); and PARA 109.

TEXT AND NOTE 17--Now a continuous period of five years: Immigration Rules para 238 (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) para 12).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/D. ADMISSION OF PERSONS FOR MARRIAGE/119. Fiancés and fiancées.

D. ADMISSION OF PERSONS FOR MARRIAGE

119. Fiancés and fiancées.

A person seeking leave to enter the United Kingdom¹ as a fiancé or fiancée (that is, with a view to marriage and permanent settlement in the United Kingdom) must, in addition to satisfying the general requirements for entry², show: (1) that he or she is seeking leave to enter for marriage to a person whom he or she has met³ and who is present and settled⁴ or is on the same occasion being admitted for settlement⁵; and (2) that each of the parties intends to live permanently with the other as his or her spouse after the marriage⁶. Entry is initially for a period not exceeding six months, and is subject to a condition prohibiting the entrant from taking employment⁷. If the marriage does not take place within that period an appropriate extension of stay may be granted, subject to a prohibition on employment, to enable the marriage to take place, provided that: (a) good cause is shown for the delay; (b) there is satisfactory evidence that the marriage will take place at an early date; and (c) the requirements for entry are met⁸. An extension must, however, be refused if any of these requirements is not met⁹.

A person who wishes to enter the United Kingdom for marriage but has no desire to settle thereafter should apply for entry as a visitor¹⁰.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to these requirements see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 290(iv)-(vii) (as substituted); and para 121 post.

3 The parties do not need to have met in the context of the marriage or the marriage arrangements but, nevertheless, the requirement is related to the marriage so that it demands at least an appreciation by each party of the other in the sense of eg appearance or personality: *Meharban v Entry Clearance Officer, Islamabad* [1989] Imm AR 57 (parties had played together as children but could not now recall each other's personality or appearance; refusal of entry clearance upheld). However, if the parties had been childhood friends the requirement could be met: see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 2 Annex J paragraph 1 (December 2000). See also *Raj v Entry Clearance Officer, New Delhi* [1985] Imm AR 151 ('met' implies that the parties have 'made one another's acquaintance', and therefore a meeting when both were infants aged three and four respectively did not satisfy the requirements of the rule). If the parties meet after an initial decision to refuse leave to enter, the refusal will be reconsidered and entry clearance issued if their not having been met was the only ground for the refusal: see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 2 Annex J paragraph 2.2 (December 2000).

4 For the meaning of 'settled' see para 134 post. See also para 121 note 6 post. For the purposes of the provisions relating to fiancés (ie the Immigration Rules paras 290-295 (as amended)), an EEA national who, under either the Immigration (European Economic Area) Order 1994, SI 1994/1895 (revoked) or the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended and modified), has been issued with a residence permit valid for five years is regarded as present and settled in the United Kingdom even if that EEA national has not been granted permission to remain in the United Kingdom indefinitely: Immigration Rules para 290A (added by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 19). As to EEA nationals see para 225 et seq post. As to the issue of residence permits to EEA nationals see paras 230-235 post.

5 Immigration Rules para 290(i), (ii) (para 290 substituted by Statement of Changes in Immigration Rules (HC Paper (1996-97) no 26) para 3).

6 Immigration Rules para 290(iii) (as substituted: see note 5 supra). The fact that a marriage might have economic motivation is of little or no significance in assessing the parties' intention to live together: *Saftar v Secretary of State for the Home Department* [1992] Imm AR 1, Ct of Sess. Applicants must show that they intend to live permanently together after the marriage. Provision is made for the reporting to the Secretary of State of proposed 'sham marriages' conducted for immigration purposes: see the Immigration and Asylum Act 1999 s 24; and **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 72 (2009) PARA 11.

7 Immigration Rules paras 291.

8 Immigration Rules para 293, 294 (para 293 amended by Statement of Changes in Immigration Rules (HC Paper (1996-97) no 26) para 4). As to the substantive requirements for entry see the Immigration Rules para 290(ii)-(vi) (as substituted); the text and notes 1-6 supra; and para 121 post. An application for leave to remain as a fiancé or fiancée by a person admitted in another capacity will be refused unless there are exceptional compassionate circumstances: *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 2 paragraph 3.2 (December 2000).

9 Immigration Rules para 295.

10 See para 99 ante. However, where the applicant is not sure whether he or she will remain in the United Kingdom or return home after the wedding, the applicant should be treated as a fiancé or fiancée: see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 2 Annex K paragraph 1 (November 2000).

UPDATE

119 Fiancés and fiancées

TEXT AND NOTES--Nothing in the Immigration Rules is to be construed as permitting a person to be granted entry clearance, leave to enter or variation of leave as a fiancé(e) if either the applicant or the sponsor will be aged under 21 on the date of arrival of the applicant in the United Kingdom or (as the case may be) on the date on which the leave to enter or variation of leave would be granted: Immigration Rules para 289AA (added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 19; and amended by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 164) para 5; and Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 86). For the meaning of 'sponsor' see PARA 121.

TEXT AND NOTE 4--'Present and settled' means that the person concerned is settled in the United Kingdom and, at the time that an application under the Immigration Rules is made, is physically present here or is coming here with or to join the applicant and intends to make the United Kingdom his home with the applicant if the application is successful: Immigration Rules para 6 (definition added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 1(c)).

NOTE 4--Immigration Rules para 290A substituted: Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1053) para 11.

NOTE 6--'Intention to live permanently with the other' means an intention to live together, evidenced by a clear commitment from both parties that they will live together permanently in the United Kingdom immediately following the outcome of the application in question or as soon as circumstances permit thereafter; and 'intends to live permanently with the other' is to be construed accordingly: Immigration Rules para 6 (definition added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 1(c)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/120. Holders of special vouchers.

E. ADMISSION OF PERSONS FOR SETTLEMENT

120. Holders of special vouchers.

Provision was made for a person in possession of a special voucher¹ issued to him by a British government representative overseas (or a valid entry clearance in lieu) to be granted indefinite leave to enter in the United Kingdom². The dependants of a holder of a special voucher could also be admitted if they had obtained entry clearances for that purpose and if they would be maintained and accommodated adequately by the voucher-holder without recourse to public funds³. Indefinite leave was not granted if neither the special voucher nor a valid United Kingdom entry clearance was produced on arrival⁴.

1 The special voucher scheme operated by the Foreign and Commonwealth Office for former citizens of the United Kingdom and colonies coming from East Africa was devised in 1968, when the Commonwealth Immigrants Act 1968 removed their right to enter the United Kingdom (see *East African Asians v United Kingdom* (1973) 3 EHRR 76, EComHR). As from 18 September 2002, the provisions under which the scheme was made (ie Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') paras 249-254) are revoked by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 14.

The criteria for the grant of a special voucher were outside the Immigration Rules: see *R v Chief Immigration Officer, Heathrow, ex p Salamat Bibi* [1976] 3 All ER 843, [1976] 1 WLR 979, CA. Such vouchers could not be issued in the United Kingdom: *Shah v Secretary of State for the Home Department* [1972] Imm AR 56. A special voucher was not an entry clearance and no provision was made for an appeal against refusal of such a voucher. In addition, the operation of the scheme was not subject to the Sex Discrimination Act 1975: *Amin v Entry Clearance Officer, Bombay* [1983] 2 AC 818, [1983] 2 All ER 864, HL. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Immigration Rules paras 249, 250.

3 Immigration Rules paras 252, 253. For the meaning of 'public funds' see para 99 note 8 ante. The spouse and dependent children under 25 qualified as dependants. As to the maintenance and accommodation requirements see para 121 post. These requirements did not apply to the head of the household, and were not applied vigorously to dependants: see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 2 Annex C paragraph 8.1 (December 2000).

4 Immigration Rules paras 251, 254.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/121. General requirements for admission of relatives, fiancés or fiancées, and unmarried partners.

121. General requirements for admission of relatives, fiancés or fiancées, and unmarried partners.

Spouses¹, children (including adopted children and prospective adoptees)², and parents, grandparents and other dependent relatives³, fiancés or fiancées⁴, and unmarried partners⁵ of persons ('sponsors') either physically present and settled in the United Kingdom⁶ or on the same occasion being admitted for settlement (that is, being given indefinite leave to enter) or given a limited leave to enter or remain with a view to settlement, and persons exercising certain rights of access to children resident in the United Kingdom⁷, may be admitted if (where necessary) they have a current entry clearance granted for the purpose which they can produce on arrival⁸. Leave to enter must be refused if no such entry clearance is produced⁹. An entry clearance will also be refused if the entry clearance officer is not satisfied: (1) that adequate accommodation will be provided for the person without recourse to public funds¹⁰ in accommodation which the sponsor or applicant owns or occupies exclusively¹¹; and (2) that the sponsor or applicant is able and willing to maintain them and, where relevant, any dependants, adequately without recourse to public funds¹². This does not preclude the sponsor from having recourse to public funds in his or her own right, since a person is not to be regarded for these purposes as having (or potentially having) recourse to public funds merely because he is (or will be) reliant in whole or in part on public funds provided to his sponsor, unless as a result of

his presence in the United Kingdom, the sponsor is (or would be) entitled to increased additional public funds¹³.

1 See Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') paras 76-81, 194-196, 240-242, 271-273, 281 et seq (as amended). As to spouses see further para 122 post.

2 See the Immigration Rules paras 197-199, 243-245, 274-276, 297 et seq (as amended); and para 125 et seq post.

3 See the Immigration Rules para 317 et seq (as amended); and paras 132-133 post.

4 See the Immigration Rules para 290 et seq (as amended). As to fiancés or fiancées see further para 119 ante.

5 See the Immigration Rules para 295A et seq (as added); and para 123 post.

6 As to the meaning of 'United Kingdom' see para 5 note 1 ante. In the case of joint sponsors, both must be present and settled: *Shabir v Visa Officer, Islamabad* [1989] Imm AR 185. Entitlement to reside without actual residence is insufficient: *Secretary of State for the Home Department v Wong* [1992] Imm AR 180. See also *Somasundaram v Entry Clearance Officer, Colombo* [1990] Imm AR 16, IAT (exceptional leave to remain does not amount to settlement or immigration with a view to settlement).

7 See para 124 post.

8 See Immigration Rules paras 122(vi), 123, 125(vii), 126, 194(vi), 195, 197(vii), 198, 240(vi), 241, 243(vii), 244, 246(viii), 247, 271(vi), 272, 274(vii), 275, 281(vi), 282, 290(vii), 291, 295A(viii), 295B, 295J(ix), 295K, 297(vi), 299, 301(vi), 302, 303A(vi), 303B, 310(xii), 312, 314(xii), 315, 316B, 317(vi), 318 (paras 281, 290 substituted by Statement of Changes in Immigration Rules (HC Paper (1996-97) no 26) paras 1, 3; and the Immigration Rules paras 246, 247 substituted, paras 295A, 295B, 295J, 295K, 297(vi), 303A, 303B, 316B added, and paras 310(xii), 311(xii) renumbered, by Statement of Changes in Immigration Rules (Cm 4851) (2000) paras 21, 32, 34, 37-39, 41).

9 Immigration Rules paras 124, 127, 196, 199, 242, 245, 248, 273, 276, 283, 292, 295C, 295L, 300, 303, 303C, 313, 316, 316C, 319 (para 248 substituted, and paras 295C, 295L, 303C, 316C added, by Statement of Changes in Immigration Rules (Cm 4851) (2000) paras 21, 32, 37, 41).

10 For the meaning of 'public funds' see para 99 note 8 ante. Note that 'public funds' in this context does not include National Health Service treatment or state education: see the *Immigration Directorates' Instructions* Chapter 1 (General provisions) Section 7 paragraph 1.1 (May 2002). The Immigration Rules do not require that adequate maintenance be available on the date of application or decision, but that the requirements are reasonably likely to be satisfied within six months: *Begum (Momotaz) v Secretary of State for the Home Department* (1 October 1998, unreported), IAT. Information should be provided about the normal income and regular commitments of the sponsor to assess whether the amounts available are sufficient: *Uvovo v Secretary of State for the Home Department* (15 June 2000, unreported), IAT. Income support levels may be an appropriate benchmark to assess adequacy of funds available: *Begum (Momotaz) v Secretary of State for the Home Department* supra.

11 The accommodation must be owned or, alternatively, exclusively occupied by the sponsor. Ownership means an interest in the property which can include a tenancy and does not require a freehold interest. The accommodation need not be the sponsor's sole or main residence: *Sokoya v Entry Clearance Officer, Lagos* (24 April 2000, unreported), IAT. It is not necessary that the parties to a marriage have a legal title to the accommodation they intend to occupy (ie occupancy can be under a licence or as a lodger); and the parties' occupation does not need to extend to the whole of the premises provided there is exclusive occupation of one room, since the purpose of the rule is to ensure that they do not fall as a charge on public funds or become obliged to make claims under the housing legislation: *Kasuji v Entry Clearance Officer, Bombay* [1988] Imm AR 587. The rule should not be interpreted literally and restrictively so as to exclude relatives who would have durable accommodation available without seeking assistance from the local authority: *R v Secretary of State for the Home Department, ex p Arman Ali* [2000] INLR 89.

See also as to the accommodation requirements the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 1 Annex H paragraphs 3.2, 6 (December 2000).

12 See the Immigration Rules paras 76(iii)-(iv), 79(iv), 122(iii)-(iv), 125(iv), 194(iii)-(iv), 197(iv), 240(iii)-(iv), 243(iv), 246(vi)-(vii), 271(iii)-(iv), 274(iv), 281(iv)-(v), 290(iv)-(vi), 295A(v), (vi), 295J(vi), (vii), 297(iv)-(v), 298(iv)-(v), 301(iv)-(iva), 303A(iv), 310(iv)-(v), 311(iv)-(v), 314(iv)-(iva), 316A(iv), 317(iv)-(iva) (paras 246, 281, 290 as substituted (see note 8 supra); paras 295A, 295J, 310(v), 316A(iv) added, and paras 297(iv)-(v), 298(iv)-(v), 301(iv)-(iva), 303A(iv), 310(iv), 311(iv)-(v), 314(iv)-(iva), 317(iv)-(iva) substituted, by Statement of Changes

in Immigration Rules (Cm 4851) (2000) paras 32, 34-42). Note that this requirement does not apply where a child under 18 who was born in the United Kingdom but is not a British citizen seeks to enter the United Kingdom as the child of a parent given leave to enter or remain (see the Immigration Rules para 305), and that a person seeking leave to enter as the child of a fiancé does not need to show that he will be accommodated in accommodation which his sponsor owns or occupies exclusively (Immigration Rules para 303A(iv) (as so added)).

13 Immigration Rules para 6A (added by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 4). As to whether 'indirect' recourse to public funds received by the sponsor is a recourse to public funds for these purposes see *R v Immigration Appeal Tribunal, ex p Singh* [1989] Imm AR 69; and *R v Secretary of State for the Home Department, ex p Bibi* [1995] Imm AR 157. See further *R v Secretary of State for the Home Department, ex p Arman Ali* [2000] INLR 89 (sponsor need not personally provide financial support, which may be provided by a third party or by the dependent relatives themselves, if they are capable of work or self-supporting; the exclusion of a spouse is unlikely to be consistent with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) where there would be no recourse to public funds).

UPDATE

121 General requirements for admission of relatives, fiancés or fiancées, and unmarried partners

NOTES 1, 8, 9, 12--Immigration Rules paras 240-242 replaced by Immigration Rules paras 240-242F (substituted by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 11). Immigration Rules paras 194-196 replaced by Immigration Rules paras 194-196F (substituted by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 6; Immigration Rules para 196B amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 18).

NOTES 1, 8, 12--Immigration Rules paras 271-273 replaced by Immigration Rules paras 271-273F (substituted by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 13).

TEXT AND NOTE 6--'Sponsor' means the person in relation to whom an applicant is seeking leave to enter or remain as their spouse, fiancé, civil partner, proposed civil partner, unmarried partner, same-sex partner or dependent relative, as the case may be, under the Immigration Rules paras 277-295O or 317-319: Immigration Rules para 6 (definition added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 1(c); substituted by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 1(b); and amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 1(c)). 'Civil partner' means a civil partnership which exists under or by virtue of the Civil Partnership Act 2004 (see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 72 (2009) PARA 2) (and any reference to a civil partner is to be read accordingly): Immigration Rules para 6 (definition added by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 1(a)).

For the meaning of 'present and settled' see PARA 134.

NOTES 10, 12--Provision of maintenance by third party can be taken into account in considering whether person seeking leave to enter United Kingdom is able to be maintained without recourse to public funds: *Mahad v Entry Clearance Officer*; *Ali v Entry Clearance Officer*; *Ismail v Entry Clearance Officer*; *Sakthivel v Entry Clearance Officer*; *Muhumed v Entry Clearance Officer* [2009] UKSC 16, [2010] 2 All ER 535 (overruling *MW (Liberia) v Secretary of State for the Home Department* [2007] EWCA Civ 1376, [2008] 1 WLR 1068, [2007] All ER (D) 340 (Dec) and *AM (Ethiopia) v Entry Clearance Officer* [2008] EWCA Civ 1082, [2008] All ER (D) 150 (Oct)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/122. Spouses.

122. Spouses.

A person seeking leave to enter the United Kingdom¹ with a view to settlement as a spouse must, in addition to meeting the general requirements for the admission of dependants², show that he is married to a person who is present and settled³ in the United Kingdom, or who is on the same occasion being admitted for settlement⁴, that the parties to the marriage have met each other⁵, and that each has the intention of living permanently with the other as his or her spouse in a subsisting marriage⁶. Provided these requirements and the general requirements are met, leave to enter as a spouse may be granted for an initial period of up to 12 months⁷. A person with leave to enter or remain in another capacity may be granted leave to remain as a spouse for an initial period of 12 months if the Secretary of State⁸ is satisfied that the requirements for admission as a spouse are met⁹, the applicant has not remained in breach of the Immigration Laws¹⁰, and the marriage has not taken place after the initiation of deportation proceedings against the applicant¹¹. However, an extension of stay may not be granted if any of these requirements is not met¹². Where at the end of a 12-month period, either as granted on entry or by way of extension of leave, an applicant remains in a subsisting marriage to the person he was admitted or granted the extension to join, and the requirements concerning settlement, intention to live permanently as spouses and ability to provide maintenance and accommodation are met¹³, the Secretary of State may grant the applicant indefinite leave to remain¹⁴. Indefinite leave must not, however, be granted if any of these requirements is not met¹⁵.

The bereaved spouse of a person who was present and settled in the United Kingdom and who died during the spouse's 12-month leave or extension period may be given indefinite leave to remain provided that at the time of the death the parties were still married and intended to live permanently with each other as spouses in a subsisting marriage¹⁶. Indefinite leave must not, however, be granted if any of these requirements is not met¹⁷.

Where a marriage breaks down within the initial 12-months' leave to remain must generally be refused¹⁸, although a concessionary policy provides for a spouse to be granted indefinite leave to remain on proof that he or she has been the victim of domestic violence during the 12-month period, while the marriage was subsisting¹⁹.

A person seeking leave to enter the United Kingdom as the spouse of a person who has limited leave to enter or remain in the United Kingdom:

- 270 (1) as a student, student nurse or postgraduate doctor or dentist²⁰;
- 271 (2) as a teacher or language assistant under an approved exchange scheme²¹;
- 272 (3) for approved training or work experience²²;
- 273 (4) for work permit employment²³;
- 274 (5) for certain categories of non-work permit employment²⁴;
- 275 (6) on the grounds of United Kingdom ancestry²⁵;
- 276 (7) in order to establish himself in business or as an investor²⁶;
- 277 (8) as a writer, composer or artist²⁷; or
- 278 (9) as a retired person of independent means²⁸,

must, in addition to meeting the general requirements for the admission of dependants²⁹, show that he is married to a person with limited leave to enter or remain³⁰, that the parties intend to live with each other during the applicant's stay as spouses in a subsisting marriage³¹, and that the applicant does not intend to stay in the United Kingdom beyond any period of leave granted to his spouse³². Leave to enter may be granted for a period not in excess of that

granted to the person with limited leave to enter³³, and leave to remain may be granted, on the same terms, provided requirements for entry are met, but must be refused if any of them is not³⁴. Indefinite leave may be granted to the spouse of a person granted indefinite leave to remain under heads (4)-(9) above provided the person was validly admitted and continues to meet the requirements for entry, although indefinite leave must be refused if entry was not valid or any of those requirements is not met³⁵.

Nothing in the Immigration Rules is to be construed: (a) as permitting a person to be granted entry clearance, leave to enter or remain or variation of leave as a spouse of another if either party to the marriage would be aged under 16 on the date of arrival in the United Kingdom or (as the case may be) on the date on which the leave to remain or variation of leave is granted³⁶; or (b) as allowing a person to be granted entry clearance, leave to enter, leave to remain or variation of leave as the spouse of a man or woman ('the sponsor') if his or her marriage to the sponsor is polygamous³⁷ and there is another person living who is the husband or wife of the sponsor and who either is, or at any time since his or her marriage to the sponsor has been, in the United Kingdom³⁸, or has been granted a certificate of entitlement³⁹ or entry clearance to enter the United Kingdom as the husband or wife of the sponsor⁴⁰.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to the general requirements see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 281(i), (iv)-(vi) (as substituted); and para 121 ante.

3 As to the requirement that the sponsor be 'present and settled' see para 134 post. See also para 121 note 6 ante. The requirement that the sponsor be present and settled is deemed satisfied in the case of a spouse (ie for the purposes of the Immigration Rules paras 281-289 (as amended)) where the sponsor is a member of Her Majesty's forces serving overseas, a permanent member of Her Majesty's diplomatic service or a comparable United Kingdom-based staff member of the British Council on a tour of duty abroad, or a staff member of the Department for International Development who is a British citizen or is settled in the United Kingdom: Immigration Rules para 281 (amended by Statement of Changes in Immigration Rules (Cmnd 5597) (2002) para 18).

4 Immigration Rules para 281(i) (para 281 substituted by Statement of Changes in Immigration Rules (HC Paper (1996-1997) no 26) para 1). The marriage must be recognised as valid under United Kingdom law. A polygamous marriage contracted by a spouse domiciled in the United Kingdom is not recognised as valid: see eg *R v Immigration Appeal Tribunal, ex p Miah* (14 June 1994, unreported), QBD. An overseas divorce may not be recognised in the United Kingdom, rendering a second marriage void: see eg *Chaudhary v Chaudhary* [1985] Fam 19. Marriages celebrated in the United Kingdom must comply with the requirements of the marriage legislation (see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW**), but presumptions as to the existence of a marriage in the parties' country of origin, based on prolonged cohabitation or the man's acknowledgement of a woman's child or of the marriage, have been accepted by the appellate authorities: see *Begum (Nazir) v Entry Clearance Officer, Islamabad* [1976] Imm AR 31; *Begum (Inayat) v Visa Officer, Islamabad* [1978] Imm AR 174; *Ur Rehman v Entry Clearance Officer, Islamabad* (12 June 2000, unreported), IAT (telephone marriage). The *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 1 Annex D paragraph 3 (December 2000) recognise a proxy marriage as valid provided it is so recognised in the country where it was celebrated. A marriage found to be invalid may be the basis of an application as a fiancé if the parties are able to marry in the United Kingdom (see *Ach-Charki v Entry Clearance Officer, Rabat* [1991] Imm AR 162; and para 119 ante), or as an unmarried partner if they are not (see para 123 post).

5 Immigration Rules para 281(ii) (as substituted: see note 4 supra). As to this requirement see para 119 note 3 ante.

6 Immigration Rules para 281(iii) (as substituted: see note 4 supra). It is entirely proper for a sponsor settled in the United Kingdom to make it a condition of the marriage that his or her spouse should come to live in the United Kingdom and this should not be used as a basis for doubting the intentions of the parties: *R v Immigration Appeal Tribunal, ex p Wali* [1989] Imm AR 86; *Saftar v Secretary of State for the Home Department* [1992] Imm AR 1, Ct of Sess; *Zia v Secretary of State for the Home Department* [1993] Imm AR 404. Cf *Masood v Immigration Appeal Tribunal* [1992] Imm AR 69, CA. Economic motivation is of little or no significance in assessing intention to live together: *Saftar v Secretary of State for the Home Department* supra. Cohabitation or the birth of a child should satisfy the rule. Where the parties have not cohabited, evidence such as visits, correspondence and contact is highly relevant in assessing the intentions of the parties as well as whether or not the marriage is subsisting: *R v Immigration Appeal Tribunal, ex p Hoque*, *R v Immigration Appeal Tribunal, ex p Singh* [1988] Imm AR 216, CA; *R v Immigration Appeal Tribunal, ex p Kumar* [1986] Imm AR 446, CA. In

marriage cases intention is assessed at the date of the decision on the application (contrast fiancé cases, where the date of the marriage is the relevant date for assessment (see the Immigration Rules para 290(iii); and para 119 ante).

7 Immigration Rules paras 282, 283. Where a Swiss national was admitted to the United Kingdom before 1 June 2002 for an initial period not exceeding 12 months pursuant to the Immigration Rules para 282 and on or after that date became a qualified person or the family member of such a person under the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended and modified) (see para 225 et seq post) he may, on application, have his residence permit endorsed to show permission to remain in the United Kingdom indefinitely if he meets the requirements of the Immigration Rules para 287 (as substituted) (see the text and notes 13-16 infra): Immigration Rules para 257A (added by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 17).

8 As to the Secretary of State see para 2 ante.

9 Immigration Rules paras 284(i)-(iii), (vi)-(viii), 285 (para 284 substituted by Statement of Changes in Immigration Rules (HC Paper (1996-97) no 26) para 2). As to the requirements for admission as a spouse see the Immigration Rules para 281 (as substituted and amended); the text and notes 1-6 supra; and para 121 ante.

10 Immigration Rules paras 284(iv) (as substituted: see note 9 supra), 285. For the meaning of 'immigration laws' see para 26 note 9 ante.

11 Immigration Rules paras 284(v) (as substituted: see note 9 supra), 285. The reference in the text to the initiation of deportation proceedings against the applicant is a reference to the making of a recommendation for deportation or the giving of a notice under the Immigration Act 1971 s 6(2) (as amended) (see para 160 post).

12 Immigration Rules para 286. The requirements are separate and cumulative, so each has to be satisfied: *Rahman v Secretary of State for the Home Department* [1986] Imm AR 405, CA.

13 As to these requirements see the Immigration Rules paras 281(i), (iii)-(v) (as substituted), 284(ii), (vi)-(viii) (as substituted); the text and notes 1-3, 6, 9 supra; and para 121 ante.

14 Immigration Rules paras 287(a), 288 (para 287 substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 31). See *Aleem v Secretary of State for the Home Department* [1991] Imm AR 360, IAT (12 months' leave followed by a further two years' 'probationary' leave; held that there was no requirement to grant indefinite leave after either period if Secretary of State was uncertain of the stability of the marriage). Detailed enquiries on the state of the marriage will normally only be made when doubts exist, because of a suspected marriage of convenience, previous refusal of leave to enter or remain, marriage during limited leave to a comparative stranger, information received that the parties are no longer living together, or where the only evidence as to the continued subsistence of the marriage comes from the benefiting spouse: see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 1 Annex C paragraph 1 (May 2001). See also note 6 supra.

15 Immigration Rules para 289.

16 Immigration Rules para 287(b) (as substituted: see note 14 supra). See also note 6 supra.

17 Immigration Rules para 289.

18 The causes of, and responsibility for, the breakdown in marriage are immaterial: see *Patel v Secretary of State for the Home Department* [1986] Imm AR 440. Limited leave can be curtailed if the marriage breaks down: *R v Immigration Appeal Tribunal, ex p Chaudhry* [1983] Imm AR 208, QBD.

19 See the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 1 Annex C paragraph 3 (May 2001), Annex C2 (May 2001). Proof of domestic violence must be in the form of: an injunction, non-molestation or other protection order against the sponsor granted inter partes; a relevant court conviction against the sponsor; or full details of a relevant police caution (*Immigration Directorates' Instructions* Chapter 8 (Family members) Section 1 Annex C paragraph 4.2 (May 2001), Annex C2 (May 2001)). The concession applies to unmarried partners (see para 123 post) but does not apply if the sponsoring spouse or partner has only limited leave to remain or is an EEA national exercising European Community rights. The concession does not apply to fiancés (*Immigration Directorates' Instructions* Chapter 8 (Family members) Section 1 Annex C paragraphs 3, 4.1 (May 2001), Annex C2 (May 2001)). The Secretary of State must not go behind a court order: see *R (on the application of Butler) v Secretary of State for the Home Department* [2002] EWHC 854 (Admin). As to EEA nationals see para 225 et seq post.

20 Immigration Rules para 76(i).

21 Immigration Rules para 122(i). As to such persons see the Immigration Rules paras 110-115; and para 112 ante.

22 Immigration Rules para 122(i). As to such persons see the Immigration Rules paras 116-121; and para 111 ante.

23 Immigration Rules para 194(i). As to the granting of leave to enter or remain for work permit employment see the Immigration Rules paras 128-135; and para 110 ante.

24 Immigration Rules para 194(i). The categories of non-work permit employment referred to in the text are: employment as overseas journalists and broadcasters (see the Immigration Rules paras 136-143; and para 112 ante); sole representatives of non-United Kingdom firms (see the Immigration Rules paras 144-151; and para 112 ante); private servants in diplomatic households (see the Immigration Rules paras 152-159; and para 112 ante); domestic workers in private households (see the Immigration Rules paras 159A-159H (as added); and para 112 ante); employees of overseas governments and international organisations (see the Immigration Rules paras 160-168; and para 112 ante); ministers of religion, missionaries and members of religious orders (see the Immigration Rules paras 169-177; and para 112 ante); and airport-based operational ground staff of overseas-owned airlines (see the Immigration Rules paras 178-185; and para 112 ante).

25 Immigration Rules para 194(i). As to such persons see the Immigration Rules paras 186-193; and para 112 ante.

26 Immigration Rules para 240(i). As to such persons see the Immigration Rules paras 200-231 (as amended); and paras 113-115 ante.

27 Immigration Rules para 240(i). As to such persons see the Immigration Rules paras 232-239; and para 118 ante.

28 Immigration Rules para 271(i). As to such persons see the Immigration Rules paras 263-270; and para 117 ante.

29 As to the general requirements see the Immigration Rules paras 122(iii)-(iv), 194(iii)-(iv), 240(iii)-(iv), 271(iii)-(iv); and para 121 ante.

30 Immigration Rules paras 76(i), 122(i), 194(i), 240(i), 271(i).

31 Immigration Rules paras 76(ii), 122(ii), 194(ii), 240(ii), 271(ii).

32 Immigration Rules paras 76(vi), 122(v), 194(v), 240(v), 271(v).

33 Immigration Rules paras 77, 123, 195, 241, 272.

34 Immigration Rules paras 78, 123, 124, 195, 196, 241, 242, 272, 273.

35 Immigration Rules paras 195, 196, 241, 242, 272, 273.

36 Immigration Rules para 277. Thus a spouse who married abroad under the age of 16 is eligible to join his or her spouse in the United Kingdom on reaching that age, subject to satisfying the other requirements.

37 For these purposes marriage may be polygamous although at its inception neither party had any other spouse: Immigration Act 1988 s 2(6).

38 The presence of a wife or husband in the United Kingdom as a visitor, as an illegal entrant, or on temporary admission under the Immigration Act 1971 s 11 (see paras 87-94 ante), is to be disregarded for these purposes: Immigration Rules para 280 (substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 29).

39 Is a certificate of entitlement in respect of the right of abode mentioned in the Immigration Act 1971 s 2(1)(a) (see para 85 ante).

40 See the Immigration Rules para 278 (substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 27). Immigration Rules para 278 (as substituted) does not apply to any person seeking entry clearance, leave to enter or remain or variation of leave if he or she has either been in the United Kingdom before 1 August 1988 having been admitted for settlement as the husband or wife of the sponsor, or has at any time since marriage to the sponsor been in the United Kingdom at a time when there was no other spouse living with residence or rights to enter the United Kingdom as such: Immigration Rules para 279 (substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 28). It is for a person claiming that the Immigration Rules para 278 (as substituted) does not apply to him or her because he or she has been in the

United Kingdom in the circumstances referred to therein to prove that fact: Immigration Rules para 279 (as so substituted). As to the right of abode of polygamous wives see para 85 ante.

A polygamous marriage in England is always invalid but it is the law of the place of celebration of the marriage which determines whether the marriage is polygamous and not the parties' domicile: *Chetti v Chetti* [1909] P 67, 53 Sol Jo 163. See, however, note 4 supra.

UPDATE

122 Spouses [or civil partners]

TEXT AND NOTES--These provisions (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582)) apply also to civil partners. For the meaning of 'civil partner' see PARA 121.

TEXT AND NOTE 4--Now Immigration Rules para 281(i)(a) (para 281(i) substituted by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 12). A person so seeking leave to enter must alternatively show that (1) he is married to or the civil partner of a person who has a right of abode in the United Kingdom and is on the same occasion seeking admission to enter for the purposes of settlement and the parties were married at least four years ago, since which time they have been living together outside the United Kingdom; and (2) he has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, unless he is under the age of 18 or aged 65 or over at the time he makes his application: Immigration Rules para 281(i)(b) (para 281(i) as so substituted; para 281(i)(b) substituted by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 16).

NOTE 6--See also *ZH (Afghanistan) v Secretary of State for the Home Department* [2009] EWCA Civ 1060, [2009] All ER (D) 151 (Oct).

TEXT AND NOTE 7--In the case of a person within the Immigration Rules para 281(i)(a) (see TEXT AND NOTE 4), leave to enter as a spouse or civil partner may be granted for an initial period of up to 27 months or, in the case of a person who meets both of the requirements of the Immigration Rules para 281(i)(b) (see TEXT AND NOTE 4) indefinite leave to enter may be granted: Immigration Rules para 282 (substituted by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 17; and amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 971) para 1). In the case of a person who meets the requirements of the Immigration Rules para 281(i)(b)(i) (see TEXT AND NOTE 4 head (1) but not the requirement in the Immigration Rules para 281(i)(b)(ii) (see TEXT AND NOTE 4 head (2))), leave to enter may now be granted for an initial period of up to 27 months in all cases provided the immigration officer is satisfied that each of the relevant requirements of the Immigration Rules para 281 is met: Immigration Rules para 282.

Leave to enter as the spouse or civil partner of a person present and settled in the United Kingdom or who is on the same occasion being admitted for settlement is to be refused if the immigration officer is not satisfied that each of the requirements of the Immigration Rules para 281 is met: Immigration Rules para 283 (amended by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 18).

TEXT AND NOTE 8--Now an initial period of two years: Immigration Rules para 285 (amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 15).

TEXT AND NOTE 9--Now spouse or proposed civil partner: Immigration Rules para 284(i) (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) para 25).

NOTE 9--Immigration Rules para 284 further amended: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 14; Statement of Changes in Immigration Rules (Cm 5949) (2003) para 7; Statement of Changes in Immigration Rules (Cm 6339) (2004) para 13; Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) para 25; Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) para 31; Statement of Changes in Immigration Rules (HC Paper (2007-08) no 971) para 2.

TEXT AND NOTES 13-16--Immigration Rules para 287 amended: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 16; Statement of Changes in Immigration Rules (Cm 6339) (2004) paras 14, 15); Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) paras 19, 20; Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 28; Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) para 32; Statement of Changes in Immigration Rules (HC Paper (2007-08) no 971) para 3.

NOTE 15--The requirements to be met by a person who is the victim of domestic violence and who is seeking indefinite leave to remain are that the applicant (1) was admitted to the United Kingdom for a period not exceeding 27 months or given an extension of stay for a period of two years as the spouse of a person present and settled here, or (2) was admitted to the United Kingdom for a period not exceeding 27 months or given an extension of stay for a period of two years as the unmarried or same-sex partner of a person present and settled here, and (3) the relationship with his or her spouse or unmarried partner, as appropriate, was subsisting at the beginning of the relevant period of leave or extension referred to in head (1) or (2), and (4) is able to produce such evidence as may be required by the Secretary of State to establish that the relationship was caused permanently to break down before the end of that period as a result of domestic violence: Immigration Rules para 289A (added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 104) para 4; and amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 17; and Statement of Changes in Immigration Rules (HC Paper (2007-08) no 971) para 4). Indefinite leave to remain as the victim of domestic violence may be granted provided the Secretary of State is satisfied that each of the requirements of the Immigration Rules para 289A is met but must be refused if he is not so satisfied: Immigration Rules paras 289B, 289C (added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 18). Where an applicant cannot not supply evidence of domestic violence as required by the Immigration Directorate Instructions Chapter 8, the Immigration Rules para 289A gives a Home Office caseworker the discretion to accept other relevant evidence: *Ishtiaq v Secretary of State for the Home Department* (2007) Times, 22 May, CA.

NOTES 23-25, 33-35--Immigration Rules paras 194-196 replaced by Immigration Rules paras 194-196F (substituted by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 6). Immigration Rules para 195 amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 17.

NOTE 24--The categories of non-work permit employment referred to in the text do not include employment under the Sectors-Based Scheme (see the Immigration Rules paras 135I-135K): Immigration Rules para 194 (see NOTES 23-25, 33-35).

NOTES 29, 30, 34--Immigration Rules paras 240-242 replaced by Immigration Rules paras 240-242F: see PARA 121.

TEXT AND NOTE 36--In head (a) for 'either party ... under 16' read 'either the applicant or the sponsor will be aged under 21': Immigration Rules para 277 (amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 11;

Statement of Changes in Immigration Rules (HC Paper (2004-05) no 164) para 4; and Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 85).

TEXT AND NOTE 37--For the meaning of 'sponsor' see PARA 121.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/123. Unmarried partners.

123. Unmarried partners.

A person seeking leave to enter the United Kingdom¹ with a view to settlement as the unmarried partner of a person who is present and settled² in the United Kingdom or who is on the same occasion being admitted for settlement³ must, in addition to meeting the general requirements for the admission of dependants⁴, show that any previous marriage (or similar relationship) of either partner has permanently broken down and that the parties are legally unable to marry under United Kingdom law other than for reasons of consanguinity or age, have been living in a relationship akin to marriage for two years, and intend to live together permanently⁵.

Provided these requirements and the general requirements are met, leave to enter may be granted for an initial period of two years⁶. A person with leave to enter or remain in another capacity may be granted leave to remain as an unmarried partner for an initial period of two years if the Secretary of State⁷ is satisfied that the requirements for admission as an unmarried partner are met⁸, the applicant has not remained in breach of the immigration laws⁹, and the parties' relationship pre-dates any proceedings for the deportation or removal of the applicant¹⁰. However, an extension may not be granted if any of these requirements is not met¹¹. Where at the end of a two-year period, either as granted on entry or by way of extension of leave, a person remains in a subsisting unmarried relationship with the person he was admitted or granted the extension to join, and the requirements concerning intention to live permanently as partners and ability to provide maintenance and accommodation are met¹², the Secretary of State may grant indefinite leave to remain¹³. Indefinite leave must not, however, be granted if any of these requirements is not met¹⁴.

The bereaved partner of a person who was present and settled in the United Kingdom and who died during the partner's two-year leave or extension period may be given indefinite leave to remain provided that at the time of the death the parties were still partners and intended to live permanently with each other as partners in a subsisting relationship¹⁵. Indefinite leave must not, however, be granted if any of these requirements is not met¹⁶.

A person seeking leave to enter the United Kingdom as the unmarried partner of a person who has limited leave to enter or remain in the United Kingdom:

- 279 (1) for work permit employment¹⁷;
- 280 (2) for certain categories of non-work permit employment¹⁸;
- 281 (3) on the grounds of United Kingdom ancestry¹⁹;
- 282 (4) in order to establish himself in business or as an investor²⁰;
- 283 (5) as a writer, composer or artist²¹; or
- 284 (6) as a retired person of independent means²²,

must, in addition to meeting the general requirements for the admission of dependants²³, show:
(a) that any previous marriage (or similar relationship) of either partner has permanently

broken down; (b) that the parties are legally unable to marry under United Kingdom law other than for reasons of consanguinity or age, have been living in a relationship akin to marriage for two years, and intend to live with one another as partners during the applicant's stay; and (c) that the applicant does not intend to stay in the United Kingdom beyond the period of leave granted to his partner²⁴. Leave to remain may be granted provided the Secretary of State is satisfied that each of these requirements (including the general requirements) is met²⁵, but leave to remain must be refused if any of the requirements is not met²⁶.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to the requirement that the sponsor be 'present and settled' see para 134 post. See also para 121 note 6 ante. The requirement that the sponsor be present and settled is deemed satisfied in the case of an unmarried partner (ie for the purposes of Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') paras 295A-295I (as added and amended)) where the sponsor is a member of Her Majesty's forces serving overseas, a permanent member of Her Majesty's diplomatic service or a comparable United Kingdom-based staff member of the British Council on a tour of duty abroad, or a staff member of the Department for International Development who is a British Citizen or is settled in the United Kingdom: Immigration Rules para 295A(viii) (paras 295A-295O added by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 32; and the Immigration Rules para 295A amended by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 20).

3 Immigration Rules para 295A(i) (as added and amended: see note 2 supra).

4 As to the general requirements see the Immigration Rules para 295A(v), (vi), (viii) (as added and amended); and para 121 ante. In the case of unmarried partners, the requirement for entry clearance (see the Immigration Rules para 295A(viii) (as added and amended); and para 121 ante) may be waived in exceptional cases: see *R v Immigration Officer, ex p Hashim* (12 June 2000, unreported) (refusal of leave to enter to Malaysian homosexual partner for lack of entry clearance unreasonable); but see *R (on the application of Mahmood) v Secretary of State for the Home Department* [2001] 1 WLR 840, sub nom *Mahmood v Secretary of State for the Home Department* [2001] Imm AR 229, CA.

5 Immigration Rules para 295A(ii)-(iv), (vii) (as added: see note 2 supra). In connection with the requirement that the parties live together, short breaks apart for up to six months do not break the continuity where there was good reason (eg work or family commitments), and the relationship continued during the separation, but the requirement is not satisfied by partners living apart and merely visiting each other as often as possible (see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 6 Annex AA paragraph 3 (April 2001)). Where the parties have been living together for two years but have divided their time between countries and have used the 'visitor' category to do this, it is sufficient to meet the requirement (*Immigration Directorates' Instructions* Chapter 8 (Family members) Section 6 Annex AA paragraph 3 (April 2001)). In connection with the requirement that the parties be legally unable to marry see *R v Secretary of State for the Home Department, ex p Ozminos* [1994] Imm AR 287. As to capacity to marry in the United Kingdom see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 72 (2009) PARA 31 et seq.

6 Immigration Rules paras 295B, 295C (both as added: see note 2 supra).

7 As to the Secretary of State see para 2 ante.

8 Immigration Rules paras 295D(i)-(iii), (v), (vi), (viii)-(x), 295E (paras 295D, 295E as added: see note 2 supra). As to the requirements for admission as an unmarried partner see the Immigration Rules para 295A (as added); the text and notes 1-5 supra; and para 121 ante.

9 Immigration Rules paras 295D(iv), 295E (paras 295D, 295E as added: see note 2 supra). See also note 8 supra. For the meaning of 'immigration laws' see para 26 note 9 ante.

10 Immigration Rules paras 295D(vii), 295E (paras 295D, 295E as added: see note 2 supra). The reference in the text to proceedings for the deportation or removal of the applicant is a reference to a recommendation for deportation or a giving of notice under the Immigration Act 1971 s 6(2) (as amended) (see para 160 ante) or the giving of directions for removal under the Immigration and Asylum Act 1999 s 10 (see para 154 ante). See also note 8 supra.

11 Immigration Rules para 295F (as added: see note 2 supra).

12 As to these requirements see the Immigration Rules paras 295A(i), (v)-(vii) (as added), 295D(i), (viii)-(x) (as added); the text and notes 1-4, 8 supra; and para 121 ante.

- 13 Immigration Rules paras 295G, 295H (both as added: see note 2 supra).
- 14 Immigration Rules paras 295I (as added: see note 2 supra). As to the domestic violence concession see para 122 ante.
- 15 Immigration Rules paras 295M, 295N (both as added: see note 2 supra).
- 16 Immigration Rules para 295O (as added: see note 2 supra).
- 17 Immigration Rules para 295J(i) (as added: see note 2 supra). As to the granting of leave to enter or remain for work permit employment see the Immigration Rules paras 128-135; and para 110 ante.
- 18 Immigration Rules para 295J(i) (as added: see note 2 supra). The categories of non-work permit employment referred to in the text are: employment as overseas journalists and broadcasters (see the Immigration Rules paras 136-143; and para 112 ante); sole representatives of non-United Kingdom firms (see the Immigration Rules paras 144-151; and para 112 ante); private servants in diplomatic households (see the Immigration Rules paras 152-159; and para 112 ante); domestic workers in private households (see the Immigration Rules paras 159A-159H; and para 112 ante); employees of overseas governments and international organisations (see the Immigration Rules paras 160-168; and para 112 ante); ministers of religion, missionaries and members of religious orders (see the Immigration Rules paras 169-177; and para 112 ante); and airport-based operational ground staff of overseas-owned airlines (see the Immigration Rules paras 178-185; and para 112 ante).
- 19 Immigration Rules para 295J(i) (as added: see note 2 supra). As to such persons see the Immigration Rules paras 186-193; and para 112 ante.
- 20 Immigration Rules para 295J(i) (as added: see note 2 supra). As to such persons see the Immigration Rules paras 200-231 (as amended); and paras 113-115 ante.
- 21 Immigration Rules para 295J(i) (as added: see note 2 supra). As to such persons see the Immigration Rules paras 232-239; and para 118 ante.
- 22 Immigration Rules para 295J(i) (as added: see note 2 supra). As to such persons see the Immigration Rules paras 263-270; and para 117 ante.
- 23 As to the general requirements see the Immigration Rules para 295J(vi), (vii), (ix) (as added); and para 121 ante. See note 4 supra.
- 24 Immigration Rules para 295J(ii)-(v), (viii) (as added: see note 2 supra). See note 5 supra.
- 25 Immigration Rules para 295K (as added: see note 2 supra).
- 26 Immigration Rules para 295L (as added: see note 2 supra).

UPDATE

123 Unmarried [or same-sex] partners

TEXT AND NOTES--References to unmarried partner are now to unmarried or same-sex partner and references to marriage are to marriage or civil partnership: Immigration Rules paras 295A-295O (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 27).

Nothing in the Immigration Rules is to be construed as permitting a person to be granted entry clearance, leave to enter or variation of leave as an unmarried or same-sex partner if either the applicant or the sponsor will be aged under 18 on the date of arrival of the applicant in the United Kingdom or (as the case may be) on the date on which the leave to enter or variation of leave would be granted: Immigration Rules para 295AA (added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 20; and amended by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 164) para 6; Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 27; and Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 87). For the meaning of 'sponsor' see PARA 121.

TEXT AND NOTES 1-5--Immigration Rules para 295A(i) amended: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 21; Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 21. Immigration Rules para 295A(iii), (iv) deleted: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 21.

NOTE 2--Immigration Rules paras 295A, 295D, 295L amended: Statement of Changes in Immigration Rules (Cm 5949 (2003) paras 8-11; Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 27. Immigration Rules para 295B substituted by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 22; and amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 971) para 5.

TEXT AND NOTE 6--Indefinite leave to enter may be granted in certain circumstances: Immigration Rules para 295B (as substituted: see NOTE 2).

NOTE 6--Immigration Rules para 295C amended: Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 23.

TEXT AND NOTE 8--Immigration Rules para 295D(i) amended: Statement of Changes in Immigration Rules (Cm 6339) (2004) para 16.

NOTE 8--Immigration Rules para 295D(v) deleted: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 23.

TEXT AND NOTE 13--Immigration Rules para 295G amended: Statement of Changes in Immigration Rules (Cm 6339) (2004) para 17; Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) paras 24, 25; Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) paras 29, 30; Statement of Changes in Immigration Rules (HC Paper (2007-08) no 420); Statement of Changes in Immigration Rules (HC Paper (2007-08) no 971) para 6.

TEXT AND NOTE 15--Immigration Rules para 295M amended: Statement of Changes in Immigration Rules (Cm 6339) (2004) para 18; Statement of Changes in Immigration Rules (HC Paper (2007-08) no 971) para 7.

TEXT AND NOTE 24--In head (b) words 'the parties ... or age' omitted: Immigration Rules para 295J(iii) deleted by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 24.

NOTE 25--Immigration Rules para 295K amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 31.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/124. Leave to enter or remain to exercise access rights.

124. Leave to enter or remain to exercise access rights.

A person seeking leave to enter the United Kingdom¹ to exercise access rights to a child resident in the United Kingdom² must, in addition to meeting the general requirements for the admission of such persons³, show that:

285 (1) he is the parent of a child who is resident in the United Kingdom⁴;

- 286 (2) the parent or carer with whom the child permanently resides is resident in the United Kingdom⁵;
- 287 (3) he has access rights to the child (by producing evidence in the form of a residence order or a contact order granted by a court in the United Kingdom, or a certificate issued by a district judge confirming the applicant's intention to maintain contact with the child)⁶;
- 288 (4) he intends to take an active role in the child's upbringing⁷; and
- 289 (5) the child is under the age of 18⁸.

Provided these requirements and the general requirements are met, leave to enter for the purpose of exercising access rights may be granted for an initial period of 12 months⁹. A person who has limited leave to remain as the spouse or unmarried partner of a person present and settled¹⁰ in the United Kingdom (who is the child's other parent)¹¹ may be granted leave to remain for the purpose of exercising access rights for an initial period of 12 months, provided that the Secretary of State¹² is satisfied that the requirements for entry in this capacity are met¹³, that the applicant has not remained in breach of the immigration laws¹⁴, and that the child stays with the applicant on a frequent and regular basis and the applicant intends this to continue¹⁵. Leave to remain must, however, be refused if any of these requirements is not met¹⁶.

Where at the end of a 12-month period, either as granted on entry or by way of leave to remain, the child is still under 18 years of age and the applicant can show: (a) that he takes and intends to continue to take an active role in the child's upbringing; (b) that the child visits or stays with him on a frequent and regular basis which is intended to continue; and (c) that the requirements concerning maintenance and accommodation¹⁷ are met, the Secretary of State may grant the applicant indefinite leave to remain¹⁸. Indefinite leave must not, however, be granted if any of these requirements is not met¹⁹.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 The provisions regulating entry for these purposes have been substantially amended to ensure compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969). See *Berrehab v Netherlands* (1988) 11 EHRR 322, ECtHR, in which it was held that expulsion of an immigrant admitted for marriage on marriage breakdown violated the right to respect for family life (ie the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 8) if it terminated frequent and regular contact between the non-custodial parent and the child. See also *Ciliz v The Netherlands* [2000] 2 FLR 469, ECtHR.

3 As to the general requirements see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 246(vi)-(viii) (as substituted); and para 121 ante.

4 Immigration Rules para 246(i) (paras 246-248 substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 21).

5 Immigration Rules para 246(ii) (as substituted: see note 4 supra).

6 Immigration Rules para 246(iii) (as substituted: see note 4 supra). As to contact orders and residence orders see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) para 247 et seq.

7 Immigration Rules para 246(iv) (as substituted: see note 4 supra).

8 Immigration Rules para 246(v) (as substituted: see note 4 supra).

9 Immigration Rules paras 247, 248 (both as substituted: see note 4 supra).

10 As to the requirement that a person be 'present and settled' see para 134 post. See also para 121 note 6 ante.

11 Immigration Rules para 248A(vii) (paras 248A-248F added by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 21). As to the granting of limited leave to spouses and unmarried partners see paras 121-123 ante.

12 As to the Secretary of State see para 2 ante.

13 As to these requirements see the Immigration Rules para 246 (as substituted); the text and notes 1-8 supra; and para 121 ante. Note that, in connection with the requirement that the applicant prove he has access rights to the child, a person seeking leave to remain may, as an alternative to the requirements set out in head (3) in the text, produce a statement from the child's other parent (or, if contact is supervised, from the supervisor) that the applicant is maintaining contact with the child: Immigration Rules para 248A(iii)(c) (as added: see note 11 supra).

14 Persons who have overstayed following marriage or relationship breakdown are expected to return home and apply for entry clearance, unless the period of overstay is very short or there are exceptional compassionate circumstances: see para 155 post. For the meaning of 'immigration laws' see para 26 note 9 ante.

15 Immigration Rules paras 248A, 248B (both as added: see note 11 supra). This provision allows those whose marriage or relationship has broken down during the probationary period to remain in contact with children of the relationship.

16 Immigration Rules para 248C (as added: see note 11 supra).

17 As to these requirements see the Immigration Rules paras 246(vi)-(vii) (as substituted), 248A(ix)-(x) (as added); the text and notes 3, 13 supra; and para 121 ante.

18 Immigration Rules paras 248D, 248E (both as added: see note 11 supra).

19 Immigration Rules para 248F (as added: see note 11 supra).

UPDATE

124 Leave to enter or remain to exercise access rights

TEXT AND NOTE 10--For 'spouse or unmarried partner' read 'spouse, civil partner, unmarried partner or same-sex partner': Immigration Rules para 248A(vii) (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 15).

TEXT AND NOTES 17, 18--Also, head (d) that he has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, unless he is under the age of 18 or aged 65 or over at the time he makes his application: Immigration Rules para 248D (amended by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 12). As to knowledge of language and life in the United Kingdom see the Immigration Rules paras 33B-33D (added by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 1).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/125. Children of persons present and settled or being admitted for settlement.

125. Children of persons present and settled or being admitted for settlement.

A child under 18¹ who is seeking indefinite leave to enter the United Kingdom² to accompany or join his parent³ or parents or a relative in circumstances where:

- 290 (1) both of his parents are present and settled⁴ in the United Kingdom or being admitted for settlement on the same occasion⁵;
- 291 (2) one parent is present and settled and the other is being admitted for settlement on the same occasion⁶;
- 292 (3) one parent is dead and the other is present and settled or is on the same occasion being admitted for settlement⁷;
- 293 (4) one parent is present and settled or is on the same occasion being admitted for settlement and has had sole responsibility for the child's upbringing⁸; or
- 294 (5) one parent or a relative is present and settled or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion undesirable and suitable arrangements have been made for the child's care⁹,

may, provided he is not leading an independent life, is unmarried and has not formed an independent family unit¹⁰, and the general requirements for admission of dependants are satisfied in relation to him¹¹, be given indefinite leave to enter the United Kingdom¹².

A child under 18 with limited leave to enter or remain in the United Kingdom¹³, who is seeking indefinite leave to remain with a parent, parents or a relative in circumstances where:

- 295 (a) both parents are present and settled in the United Kingdom¹⁴;
- 296 (b) one parent is dead and the other is present and settled¹⁵;
- 297 (c) one parent is present and settled and has had sole responsibility for the child's upbringing¹⁶; or
- 298 (d) one parent or (in the case of a child who is not adopted) a relative is present and settled and there are serious and compelling family or other considerations which make exclusion undesirable and suitable arrangements have been made for the child's care¹⁷,

may, provided he is not leading an independent life, is unmarried and has not formed an independent family unit¹⁸, and the general requirements concerning maintenance and accommodation are satisfied in relation to him¹⁹, be given indefinite leave to remain in the United Kingdom²⁰. Indefinite leave to remain must, however, be refused if any of these requirements is not met²¹.

An adopted child seeking indefinite leave to enter or remain must additionally show that he:

- 299 (i) was adopted in accordance with a decision taken by the competent administrative authority or court in his country of origin or the country in which he is resident, being a country whose adoption orders are recognised in the United Kingdom²²;
- 300 (ii) was adopted at a time when both adoptive parents were resident together abroad or either or both adoptive parents were settled in the United Kingdom²³;
- 301 (iii) has the same rights and obligations as any other child of the marriage²⁴;
- 302 (iv) was adopted due to the inability of the original parent or parents or current carer or carers to care for him and there has been a genuine transfer of parental responsibility to the adoptive parents²⁵;
- 303 (v) has lost or broken his ties with his family of origin²⁶; and
- 304 (vi) was adopted, but the adoption is not one of convenience arranged to facilitate his admission to or remaining in the United Kingdom²⁷.

Nothing in the Immigration Rules permits a child to be granted entry clearance, leave to enter or remain or a variation of leave where his mother is party to a polygamous marriage who would be refused admission or leave to remain for settlement²⁸.

1 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') paras 297(ii), 310(ii). Children who are under 18 when they apply do not cease to qualify by virtue of reaching 18 before the date of decision: see the Immigration Rules para 27. A child who was under 18 on application and was granted limited leave with a view to settlement is eligible for leave to remain despite becoming over 18: see the Immigration Rules para 298(ii); and the text and note 13 infra. Older children may be admitted under the Immigration Rules only if they satisfy the more stringent requirements for entry as dependent relatives set out in Immigration Rules para 317 (as amended): see para 137 post. As to the children of EEA nationals see para 228 et seq post; and as to the children of special voucher holders see para 120 ante. As to proof of age see the *Asylum Policy Instructions* Chapter 2 (Special applications) Section 5 paragraphs 3.7-3.9 (April 2001).

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 As to the meaning of 'parent' see para 96 note 7 ante. For these purposes, the definition also includes an adoptive parent, but only where the child was adopted in accordance with a decision taken by the competent administrative authority in a country whose adoption orders are recognised by the United Kingdom, and providing that an adopted child may not make an application for leave to enter or remain in order to accompany, join or remain with an adoptive parent under the Immigration Rules paras 297-303 (as amended) (see the text and notes 4-28 infra; and para 126 post). As to the countries whose adoption orders are so recognised see the Adoption (Designation of Overseas Adoptions) Order 1973, SI 1973/19 (as amended); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) para 375. In the case of a child born in the United Kingdom who is not a British citizen, a parent includes a person to whom there has been a genuine transfer of parental responsibility on the ground of the original parents' inability to care for the child.

4 As to the requirement that a person be 'present and settled' see para 134 post. See also para 121 note 6 ante.

5 Immigration Rules paras 297(i)(a), (b), 310(i)(a), (b). When children come to the United Kingdom with both parents, they must both intend to settle: *R v Immigration Appeal Tribunal, ex p Bibi* [1986] Imm AR 61 (decided under an analogous previous rule whereby a child brought by a 'courier wife' was properly refused admission because her mother had no intention to settle).

6 Immigration Rules paras 297(i)(c), 310(i)(c).

7 Immigration Rules paras 297(i)(d), 310(i)(d).

8 Immigration Rules paras 297(i)(e), 310(i)(e). 'Sole responsibility' cannot reasonably be construed in strictly literal terms to mean absolute responsibility of the parent in the United Kingdom for the upbringing of the child concerned, because some form of responsibility must in nearly all cases be exercised in practical matters by the relative (or other person) with whom the child is living outside the United Kingdom; the decision in every case depends on its own particular facts, and this involves consideration, inter alia, of the sources and degree of financial support for the child, and whether there is cogent evidence of genuine interest in and affection for the child by the sponsoring parent in the United Kingdom: *McGillivray v Secretary of State for the Home Department* [1972] Imm AR 63; *Emmanuel v Secretary of State for the Home Department, Martin v Secretary of State for the Home Department* [1972] Imm AR 69; *Sloley v Entry Clearance Officer, Kingston, Jamaica* [1972] Imm AR 54.

A distinction must be drawn between delegation and abdication of responsibility: *Sloley v Entry Clearance Officer, Kingston* supra; *McGillivray v Secretary of State for the Home Department* supra. There is no requirement that sole responsibility has been exercised throughout the child's life (*R v Immigration Appeal Tribunal, ex p Uddin* [1986] Imm AR 203), or that it has been exercised for a 'not insubstantial period' (*Njamu v Entry Clearance Officer* [2001] INLR 26, CA (tribunal should not have rejected case on basis that sponsoring parent had exercised sole responsibility for under three months at date of application)). A parent's legal responsibility for the child is a relevant consideration but is not conclusive: *Njamu v Immigration Appeal Tribunal* supra. See also *R v Immigration Appeal Tribunal, ex p Mahmood* [1988] Imm AR 121; approved in *Ramos v Immigration Appeal Tribunal* [1989] Imm AR 148, CA. Where a residence or custody order gives responsibility to the parent settled in the United Kingdom, this should normally be accepted as evidence that the sole responsibility requirement is met: see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 3 Annex M paragraph 4 (December 2000), which contains a list of factors caseworkers will look at where the issue is not clear. The involvement of a parent in the child's life is not fatal to the other parent having sole responsibility unless it amounts to an independent exercise of responsibility (*Njamu v Immigration Appeal Tribunal* supra), and past involvement of a parent does not defeat the rule (see *Emmanuel v Secretary of State for the Home Department* supra; *Rudolph v Entry Clearance Officer, Colombo* [1984] Imm AR 84).

Home Office policy is to admit children under 12 with a single parent in the United Kingdom even if sole responsibility cannot be established, provided there is adequate accommodation available: see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 3 Annex M paragraph 12 (December 2000).

9 Immigration Rules paras 297(i)(f), 310(i)(f). Serious and compelling family or other considerations are undefined in the rules. The rule does not require consideration of the difference in conditions between the United Kingdom and the home country, only that the conditions in the home country are sufficiently severe to make exclusion undesirable: *R v Secretary of State for the Home Department, ex p Campbell* [1972] Imm AR 115. Poverty, overcrowded conditions and the emigration of the other parent were considered to fall within the rule in *Entry Clearance Officer, Kingston v Holmes* [1975] Imm AR 20. To require 'intolerable conditions' was to set too high a test, which would defeat the purpose of the rule, which is family reunion: *Rudolph v Entry Clearance Officer, Colombo* [1984] Imm AR 84 (father's incapacity to look after child sufficient). The interpretation and application of this rule may require review to ensure compliance with the Human Rights Act 1998 and the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8: see *R v Secretary of State for the Home Department, ex p Arman Ali* [2000] INLR 89.

10 Immigration Rules paras 297(iii), 310(iii). The child must still be living with his parents (or other carers) and siblings unless he is at boarding school, must not be employed full-time or for a significant number of hours per week, excluding holiday or Saturday jobs, and must not be in or have had a relationship akin to marriage: see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 3 Annex M paragraph 3 (December 2000).

11 As to the general requirements see the Immigration Rules paras 297(iv)-(vi) (as added and substituted), 310(iv), (v), (xii) (as added, substituted and renumbered); and para 121 ante.

12 Immigration Rules paras 299, 300, 312, 313.

13 Immigration Rules paras 298(ii)(a), 311(ii)(a). The effect of Immigration Rules para 311 (as amended) (see the text and notes 14-27 infra) is that a child present in the United Kingdom with limited leave in another capacity may in certain circumstances be granted indefinite leave to remain as the adopted child of a parent or parents present and settled or being admitted for settlement in the United Kingdom.

14 Immigration Rules paras 298(i)(a), 311(i)(a).

15 Immigration Rules paras 298(i)(b), 311(i)(b).

16 Immigration Rules paras 298(i)(c), 311(i)(c).

17 Immigration Rules paras 298(i)(d), 311(i)(d).

18 Immigration Rules paras 298(iii), 311(iii).

19 As to the general requirements see the Immigration Rules paras 298(iv)-(v) (as added and substituted), 311(iv)-(v) (as added and substituted); and para 121 ante.

20 Immigration Rules paras 299, 312.

21 Immigration Rules paras 300, 313.

22 Immigration Rules paras 310(vi), 311(vi) (paras 310(vi)-(xi), 311(vi)-(xi) renumbered by Statement of Changes in Immigration Rules (Cm 4851) (2000) paras 38, 39; and the Immigration Rules paras 310(vi), 311(vi) amended by Statement of Changes in Immigration Rules (Cm 5253) (2001) para 4). As to the recognition of foreign adoption orders see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) para 484. The effect of this rule is that a legal adoption in a country whose orders are not recognised by the United Kingdom (see note 3 supra) no longer qualifies an adopted child for settlement, unless the child and the adoptive parent are related and Immigration Rules para 297(i)(f) (serious and compelling family or other considerations making exclusion undesirable: see the text and note 9 supra) applies. De facto adoptions do not qualify children for settlement unless similar conditions apply: see *R v Immigration Appeal Tribunal, ex p Ali* [1988] Imm AR 237, CA. Home Office policy is to admit children who are de facto adopted on evidence of a long-standing arrangement excluding the natural parents from the care of the child: see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 5 Annex R paragraph 2 (December 2000).

23 Immigration Rules paras 310(vii), 311(vii) (as renumbered: see note 22 supra).

24 Immigration Rules paras 310(viii), 311(viii) (as renumbered: see note 22 supra). Note that a guardianship or custody order is insufficient, since it does not place the adopted child on an equal footing with the adoptive parent's own children.

25 Immigration Rules paras 310(ix), 311(ix) (as renumbered: see note 22 supra). Incapacity includes psychological inability manifesting itself as unwillingness: *Kausar v Entry Clearance Officer, Islamabad* (16 June 2000, unreported), IAT. As to whether an adoption to benefit the adopters complies see *Singh v Immigration*

Appeal Tribunal [1988] Imm AR 510, CA; *R v Secretary of State for the Home Department, ex p Dhahan* [1988] Imm AR 257; *Asif Khan v Immigration Appeal Tribunal* [1984] Imm AR 68, CA (policy precursor of rule unfair). See also note 26 *infra*.

26 Immigration Rules paras 310(x), 311(x) (as renumbered: see note 22 *supra*). This requirement and the previous one were upheld in *Pawandeep Singh v Secretary of State for the Home Department* (16 March 1999, unreported), IAT. In the context of intra-family adoptions, common in the Indian sub-continent to alleviate infertility, these requirements (not imposed in United Kingdom adoptions) are often impossible to comply with and may need review to ensure compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8: see *Re J (A Minor) (adoption: non-patril)* [1998] 1 FCR 125, CA. See also note 2 *supra*.

27 Immigration Rules paras 310(xi), 311(xi) (as renumbered: see note 22 *supra*).

28 Immigration Rules para 296 (substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 33). As to polygamous wives see paras 85, 122 *ante*.

UPDATE

125 Children of persons present and settled or being admitted for settlement

TEXT AND NOTES 1-12--Also, head (6) in the case of a de facto adoption one parent has a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom and is seeking admission to the United Kingdom on the same occasion for the purposes of settlement: Immigration Rules para 310(i)(g) (added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 26(b)).

For the purposes of adoption under the Immigration Rules paras 310-316C a de facto adoption is regarded as having taken place if (a) at the time immediately preceding the making of the application for entry clearance under the Immigration Rules the adoptive parent or parents have been living abroad (in applications involving two parents both must have lived abroad together) for at least a period of time equal to the first period mentioned in head (b)(i) and must have cared for the child for at least a period of time equal to the second period mentioned in head (b)(i); and (b) during their time abroad, the adoptive parent or parents have (i) lived together for a minimum period of 18 months, of which the 12 months immediately preceding the application for entry clearance must have been spent living together with the child, and (ii) have assumed the role of the child's parents, since the beginning of the 18-month period, so that there has been a genuine transfer of parental responsibility: Immigration Rules para 309A (added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 25).

TEXT AND NOTES 10, 18--For 'is unmarried' read 'is unmarried and is not a civil partner': Immigration Rules paras 297(iii), 298(iii), 310(iii), 311(iii) (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) paras 28, 31).

NOTE 11--Immigration Rules para 310(iv) amended, para 310(v) deleted: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 26(c), (d).

TEXT AND NOTES 13-21--Head (e) added (in terms corresponding to TEXT AND NOTES 1-12 head (6)): Immigration Rules para 311(i)(e) (added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 27(b)).

NOTE 19--Immigration Rules para 311(iv) amended, para 311(v) deleted: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 27(c), (d).

NOTES 22-27--See *Singh (Pawandeep) v Entry Clearance Officer, New Delhi* [2004] EWCA Civ 1075, [2005] QB 608 (adoption order not recognised; child adopted due to inability of adoptive parents to have more children, and child retained close links with

natural parents; refusal of entry contrary to right to respect for family life under European Convention on Human Rights art 8 as real emotional bond between him and adoptive parents and not an arrangement of convenience).

TEXT AND NOTE 22--In head (i) for 'recognised in' read 'recognised by': Immigration Rules paras 310(vi)(a), 311(vi)(a) (paras 310(vi), 311(vi) substituted by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) paras 26(e), 27(e)). Alternatively under head (i), a child must show that he is the subject of a de facto adoption (see TEXT AND NOTES 1-12): Immigration Rules paras 310(vi)(b), 311(vi)(b) (paras 310(vi), 311(vi) as so substituted).

NOTE 22--See also *MN (India) v Entry Clearance Officer (New Delhi)* [2008] EWCA Civ 38, [2008] 2 FLR 87, [2008] All ER (D) 45 (Feb) (adoption not recognised in United Kingdom and did not qualify as de facto adoption because child had not lived with sponsors for 12 months prior to adoption); and *MK (Somalia) v Entry Clearance Officer* [2008] EWCA Civ 1453, [2009] Fam Law 196, [2008] All ER (D) 252 (Dec) (no free standing policy which accrues to the advantage of de facto adoptive children who fall outside immigration rules).

TEXT AND NOTE 24--In head (iii) for 'marriage' read 'adoptive parent's or parents' family': Immigration Rules paras 310(viii), 311(viii) (amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) paras 26(f), 27(f)).

NOTE 25--See *S v Entry Clearance Officer (New Delhi)* [2005] EWCA Civ 89, [2005] All ER (D) 168 (Jan) (inability does not include unwillingness to care for child).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/126. Children of persons with limited leave to enter or remain with a view to settlement.

126. Children of persons with limited leave to enter or remain with a view to settlement.

A child under 18¹ who is seeking limited leave to enter or remain in the United Kingdom² to accompany or join, with a view to settlement, his parent³ or parents in circumstances where:

- 305 (1) one parent is present and settled⁴ in the United Kingdom or being admitted on the same occasion for settlement and the other is being or has been given limited leave to enter or remain with a view to settlement⁵;
- 306 (2) one parent is being or has been given limited leave to enter or remain with a view to settlement and has had sole responsibility for the child's upbringing⁶; or
- 307 (3) one parent is being or has been given limited leave to enter or remain with a view to settlement and there are serious and compelling family or other considerations which make exclusion undesirable and suitable arrangements have been made for the child's care⁷,

may, provided he is not leading an independent life, is unmarried and has not formed an independent family unit⁸, and the requirements for admission of dependants are or have been satisfied in relation to him⁹, be given leave to enter or (as the case may be) remain in the United Kingdom¹⁰. Leave must initially be for 12 months and, in the case of leave to remain, must be refused if any of these requirements is not met¹¹. Indefinite leave to remain may be

granted if the requirements continue to be met¹², but must be refused if any of the requirements is not met¹³.

An adopted child seeking limited leave to enter or remain under the provisions described above must additionally show that he:

- 308 (i) was adopted in accordance with a decision taken by the competent administrative authority or court in his country of origin or the country in which he is resident, being a country whose adoption orders are recognised in the United Kingdom¹⁴;
- 309 (ii) was adopted at a time when both adoptive parents were resident together abroad or either or both adoptive parents were settled in the United Kingdom¹⁵;
- 310 (iii) has the same rights and obligations as any other child of the marriage¹⁶;
- 311 (iv) was adopted due to the inability of the original parent or parents or current carer or carers to care for him and there has been a genuine transfer of parental responsibility to the adoptive parents¹⁷;
- 312 (v) has lost or broken his ties with his family of origin¹⁸; and
- 313 (vi) was adopted, but the adoption is not one of convenience arranged to facilitate his admission to or remaining in the United Kingdom¹⁹.

Nothing in the Immigration Rules permits a child to be granted entry clearance, leave to enter or remain or a variation of leave where his mother is party to a polygamous marriage who would be refused admission or leave to remain for settlement²⁰.

1 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') paras 301(ii), 314(ii). Children who are under 18 when they apply do not cease to qualify by virtue of reaching 18 before the date of decision: see the Immigration Rules para 27. Older children may be admitted only if they satisfy the more stringent requirements for entry as dependent relatives set out in the Immigration Rules para 317 (as amended): see para 137 post. As to the children of EEA nationals see para 228 et seq post. As to the children of special voucher holders see para 120 ante. As to proof of age see the *Asylum Policy Instructions* Chapter 2 (Special applications) Section 5 paragraphs 3.7-3.9 (April 2001).

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 As to the meaning of 'parent' see para 96 note 7 ante; and see also para 125 note 3 ante.

4 As to the requirement that a person be 'present and settled' see para 134 post. See also para 121 note 6 ante.

5 Immigration Rules paras 301(i)(a), 314(i)(a).

6 Immigration Rules paras 301(i)(b), 314(i)(b). As to the meaning of 'sole responsibility' see para 125 note 8 ante.

7 Immigration Rules paras 301(i)(c), 314(i)(c). As to the meaning of 'serious and compelling family or other considerations' see para 125 note 9 ante.

8 Immigration Rules paras 301(iii), 314(iii). See also para 125 note 10 ante.

9 As to these requirements see the Immigration Rules paras 301(iv), (iva), (v)-(vi) (as added and substituted), 314(iv), (iva), (xi)-(xii) (para 314(iv) as substituted; and para 314(iva) as added); and para 121 ante.

10 Immigration Rules paras 302, 303, 315, 316.

11 Immigration Rules paras 302, 303, 315, 316.

12 See the Immigration Rules paras 298, 311; and para 125 ante.

13 Immigration Rules paras 300, 313.

14 Immigration Rules para 314(v) (amended by Statement of Changes in Immigration Rules (Cm 5253) (2001) para 4)). See also para 125 note 22 ante.

15 Immigration Rules para 314(vi).

16 Immigration Rules para 314(vii). See also para 125 note 24 ante.

17 Immigration Rules para 314(viii). See also para 125 note 25 ante.

18 Immigration Rules para 314(ix). See also para 125 note 26 ante.

19 Immigration Rules para 314(x).

20 Immigration Rules para 296 (substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 33). As to polygamous wives see paras 85, 122 ante.

UPDATE

126 Children of persons with limited leave to enter or remain with a view to settlement

TEXT AND NOTES 1-10--Also, head (4) in the case of a de facto adoption one parent has a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom and is seeking admission to the United Kingdom on the same occasion for the purpose of settlement: Immigration Rules para 314(i)(d) (added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 28(b); and amended by Statement of Changes in Immigration Rules (Cm 5829 (2003) para 13).

TEXT AND NOTE 8--For 'is unmarried' read 'is unmarried and is not a civil partner': Immigration Rules paras 301(iii), 314(iii) (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) paras 28, 31).

NOTE 9--Immigration Rules para 314(iv) amended, para 314(iva) deleted: Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 28(c), (d).

NOTES 10, 11--Immigration Rules para 320 amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 971) para 8.

TEXT AND NOTE 14--In head (i) for 'recognised in' read 'recognised by': Immigration Rules para 314(v)(a) (para 314(v) substituted by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 28(e)). Alternatively under head (i) an adopted child must show that he is the subject of a de facto adoption (see TEXT AND NOTES 1-10): Immigration Rules para 314(v)(b).

TEXT AND NOTE 16--In head (iii) for 'marriage' read 'adoptive parent's or parents' family': Immigration Rules para 314(vii) (amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 28(f)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/127. Children of persons with limited leave to enter or remain for employment, etc.

127. Children of persons with limited leave to enter or remain for employment, etc.

A child under 18 years of age seeking leave to enter or remain in the United Kingdom¹ as the child of a person with limited leave to enter or remain:

- 314 (1) for work permit employment² or non-work permit employment³;
- 315 (2) as a person with United Kingdom ancestry⁴;
- 316 (3) for the purpose of establishing himself in business⁵;
- 317 (4) as an investor⁶;
- 318 (5) as a writer, composer or artist⁷; or
- 319 (6) as a retired person of independent means⁸,

may be given leave to enter or remain in the United Kingdom⁹ provided he satisfies the requirements for the admission of dependants¹⁰ and:

- 320 (a) he is unmarried, has not formed an independent family unit and is not leading an independent life¹¹;
- 321 (b) he will not stay in the United Kingdom beyond any period of leave granted to his parent or parents¹²; and
- 322 (c) save where the parent he is accompanying or joining is his sole surviving parent or has had sole responsibility for his upbringing, or where there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable and suitable arrangements have been made for his care, both parents are being or have been admitted or allowed to remain in the United Kingdom¹³.

Any leave so granted must not be in excess of that granted to the parent¹⁴.

Where leave to remain has been granted to a child of a person with limited leave to enter or remain:

- 323 (i) for work permit or non-work permit employment (other than teachers or language assistants under approved exchange schemes and persons given leave to enter for approved training or work experience);
- 324 (ii) as a person with United Kingdom ancestry;
- 325 (iii) for the purpose of establishing himself in business;
- 326 (iv) as an investor;
- 327 (v) as a writer, composer or artist; or
- 328 (vi) as a retired person of independent means,

indefinite leave to remain may be granted provided the Secretary of State¹⁵ is satisfied the applicant meets the requirements for leave to enter¹⁶ and indefinite leave is being granted to the child's parent¹⁷ at the same time¹⁸. Indefinite leave must, however, be refused if any of those requirements is not met or the parent is not at that time being granted indefinite leave¹⁹.

Nothing in the Immigration Rules permits a child to be granted entry clearance, leave to enter or remain or a variation of leave where his mother is party to a polygamous marriage who would be refused admission or leave to remain for settlement²⁰.

1 The child must be under 18 at the date of decision, not only the date of application, and Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 27 (see para 96 ante) does not apply. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to eligibility for limited leave to enter or remain for work permit employment see the Immigration Rules paras 128-135; and para 110 ante. As to work permits generally see para 109 ante.

3 ie overseas journalists and broadcasters (see the Immigration Rules paras 136-143; and para 112 ante), sole representatives of non-United Kingdom firms (see the Immigration Rules paras 144-151; and para 112 ante), private servants in diplomatic households (see the Immigration Rules paras 152-159; and para 112 ante),

domestic workers in private households (see the Immigration Rules paras 159A-159H; and para 112 ante), employees of overseas governments and international organisations (see the Immigration Rules paras 160-168; and para 112 ante), ministers of religion, missionaries and members of religious orders (see the Immigration Rules paras 169-177; and para 112 ante), airport-based operational ground staff of overseas-owned airlines (see the Immigration Rules paras 178-185; and para 112 ante), teachers or language assistants under approved exchange schemes (see the Immigration Rules paras 110-115; and para 112 ante), and persons given leave to enter for approved training or work experience (see the Immigration Rules paras 116-121; and para 111 ante).

4 See the Immigration Rules paras 186-193; and para 112 ante.

5 See the Immigration Rules paras 200-223 (as amended); and paras 113-114 ante. For the meaning of 'business' see para 113 note 3 ante.

6 See the Immigration Rules paras 224-231; and para 115 ante.

7 See the Immigration Rules paras 232-239; and para 118 ante.

8 As to eligibility for leave to enter as a retired person of independent means see the Immigration Rules paras 263-270; and para 117 ante.

9 Immigration Rules paras 125(i), (ii), 126, 197(i), (ii), 198, 243(i), (ii), 244, 274(i), (ii), 275.

10 As to the requirements see the Immigration Rules paras 125(iv), (vii), 126, 127, 197(iv), (vii), 198, 199, 243(iv), (vii), 244, 245, 274(iv), (vii), 275, 276; and para 121 ante.

11 Immigration Rules paras 125(iii), 197(iii), 243(iii), 274(iii).

12 Immigration Rules paras 125(v), 197(v), 243(v), 274(v). As to the meaning of 'parent' see para 96 note 7 ante; and see also para 125 note 3 ante.

13 Immigration Rules paras 125(vi), 197(vi), 243(vi), 274(vi). As to the meaning of 'sole responsibility' see para 125 note 8 ante. As to the meaning of 'serious and compelling family or other considerations' see para 125 note 9 ante.

14 Immigration Rules paras 126, 198, 244, 275. Where leave is granted to a child of a retired person of independent means it is subject to a condition prohibiting employment except where indefinite leave to remain is granted: Immigration Rules para 275.

15 As to the Secretary of State see para 2 ante.

16 As to these requirements see the Immigration Rules paras 197(i)-(vi), 243(i)-(vi), 274(i)-(vi); the text and notes 1-13 supra; and para 121 ante.

17 Is the person with limited leave to enter or remain under the Immigration Rules paras 128-193, 200-239 (as amended), or 263-270.

18 Immigration Rules para 198, 244, 275. See note 14 supra.

19 Immigration Rules para 199, 245, 276.

20 Immigration Rules para 296 (substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 33). As to polygamous wives see paras 85, 122 ante.

UPDATE

127 Children of persons with limited leave to enter or remain for employment, etc

TEXT AND NOTE 11--For 'is unmarried' read 'is unmarried and is not a civil partner': Immigration Rules paras 125(iii), 197(iii), 243(iii), 274(iii) (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) paras 9, 12, 14, 18). or the meaning of 'civil partner' see PARA 121.

NOTE 16--Immigration Rules para 197 amended: Statement of Changes in Immigration Rules (Cm 5829) (2003) para 10).

NOTE 17--The reference to the Immigration Rules paras 128-193 does not include the Immigration Rules paras 1351I-135K (Sectors-Based Scheme): Immigration Rules paras 198, 199 (amended by Statement of Changes in Immigration Rules (Cm 5829) (2003) paras 11, 12).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/128. Children of fiancés or fiancées.

128. Children of fiancés or fiancées.

Where a child under the age of 18¹ seeking limited leave to enter the United Kingdom² to accompany or join a parent³ who is or has been admitted as a fiancé⁴ can show that:

- 329 (1) he is not leading an independent life, is unmarried and has not formed an independent family unit⁵;
- 330 (2) there are serious and compelling family or other considerations which make exclusion undesirable, suitable arrangements have been made for his care in the United Kingdom, and there is no other person outside the United Kingdom who could reasonably be expected to care for him⁶; and
- 331 (3) the general requirements concerning maintenance and accommodation are satisfied in relation to him⁷,

he may be granted limited leave to enter the United Kingdom as the child of a fiancé⁸. Leave so granted is for a period not in excess of that granted to the fiancé, although if the fiancé's leave is to expire in more than six months, the child's leave must be for a period not exceeding six months⁹. An extension of stay may be granted to a fiancé's child provided the Secretary of State¹⁰ is satisfied that the requirements for entry are or have been met¹¹; however, an extension must be refused if any of those requirements is not met¹².

1 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 303A(ii) (paras 303A-303F added by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 37). Children who are under 18 when they apply do not cease to qualify by virtue of reaching 18 before the date of decision: see the Immigration Rules para 27. Older children may be admitted only if they satisfy the more stringent requirements for entry as dependent relatives set out in Immigration Rules para 317 (as amended): see para 137 post. As to the children of EEA nationals see para 228 et seq post. As to the children of special voucher holders see para 120 ante. As to proof of age see the *Asylum Policy Instructions* Chapter 2 (Special applications) Section 5 paragraphs 3.7-3.9 (April 2001).

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 As to the meaning of 'parent' see para 96 note 7 ante; and see also para 125 note 3 ante.

4 Immigration Rules para 303A(i) (as added: see note 1 supra). These provisions apply equally to fiancées.

5 Immigration Rules para 303A(iii) (as added: see note 1 supra). See para 125 note 10 ante.

6 Immigration Rules para 303A(v) (as added: see note 1 supra). As to the meaning of 'serious and compelling family or other considerations' see para 125 note 9 ante.

7 As to the general requirements see the Immigration Rules para 303A(iv), (vi) (as added); and para 121 ante.

8 Immigration Rules paras 303B, 303C (both as added: see note 1 supra).

9 Immigration Rules para 303B (as added: see note 1 supra).

10 As to the Secretary of State see para 2 ante.

11 Immigration Rules paras 303D, 303E (both as added: see note 1 supra). As to the requirements for entry see the Immigration Rules para 303A(i)-(v); the text and notes 1-7 supra; and para 121 ante.

12 Immigration Rules para 303F (as added: see note 1 supra).

UPDATE

128 Children of fiancés or fiancées [or proposed civil partner]

TEXT AND NOTES--These provisions apply equally to proposed civil partners: Immigration Rules paras 303A-303F (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 29(a)). For the meaning of 'civil partner' see PARA 121.

TEXT AND NOTE 5--For 'is unmarried' read 'is unmarried and is not a civil partner': Immigration Rules para 303A(iii) (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 29(b)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/129. Children seeking leave to enter for the purpose of being adopted.

129. Children seeking leave to enter for the purpose of being adopted.

A child under the age of 18¹ seeking limited leave to enter the United Kingdom² for the purpose of being adopted in the United Kingdom in circumstances where:

- 332 (1) both prospective parents³ are present and settled⁴ in the United Kingdom or are being admitted for settlement on the same occasion that the child is seeking admission⁵;
- 333 (2) one prospective parent is present and settled and the other is being admitted for settlement on the same occasion that the child is seeking admission⁶;
- 334 (3) one prospective parent is present and settled and the other is being given limited leave to enter or remain with a view to settlement on the same occasion that the child is seeking admission, or has previously been given such leave⁷;
- 335 (4) one prospective parent is being admitted for settlement on the same occasion that the other is being granted limited leave to enter with a view to settlement, which is also on the same occasion that the child is seeking admission⁸;
- 336 (5) one prospective parent is present and settled or is being admitted for settlement on the same occasion that the child is seeking admission, and has had sole responsibility for the child's upbringing⁹; or
- 337 (6) one prospective parent is present and settled or is being admitted for settlement on the same occasion that the child is seeking admission, and there are serious and compelling family or other considerations which would make the child's exclusion undesirable, and suitable arrangements have been made for the child's care¹⁰,

may be admitted, for a period not exceeding 12 months¹¹, provided he:

- 338 (a) is not leading an independent life, is unmarried and has not formed an independent family unit¹²;
- 339 (b) will have the same rights and obligations as any other child of the marriage¹³;
- 340 (c) is being adopted due to the inability of the original parent or parents or current carer or carer (or those looking after him immediately prior to him being physically transferred to his prospective parent or parents) to care for him, and there has been a genuine transfer of parental responsibility to the prospective parent or parents¹⁴;
- 341 (d) has lost or broken or intends to lose or break his ties with his family of origin¹⁵;
- 342 (e) will be adopted in the United Kingdom by his prospective parent or parents, but the proposed adoption is not one of convenience arranged to facilitate his admission to the United Kingdom¹⁶; and
- 343 (f) satisfies the general requirements for admission of dependants¹⁷.

Where an order authorising the adoption of a minor is made by a court in the United Kingdom, he is a British citizen as from the date of the order if the adopter or, in the case of a joint adoption, one of the adopters is a British citizen on that date¹⁸. Where neither adopter is a British citizen, the child may apply for indefinite leave to remain under the ordinary Immigration Rules relating to children¹⁹.

1 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 316A(ii) (paras 316A-316C added by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 41).

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 As to the meaning of 'parent' see para 96 note 7 ante; and see also para 125 note 3 ante. For the requirements applying to prospective adopters see the Adoption of Children from Overseas Regulations 2001, SI 2001/1251; the Adoption of Children from Overseas (Wales) Regulations 2001, SI 2001/1272; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) para 483 et seq.

4 As to the requirement that a person be 'present and settled' see para 134 post. See also para 121 note 6 ante.

5 Immigration Rules para 316A(i)(a), (b) (as added: see note 1 supra).

6 Immigration Rules para 316A(i)(c) (as added: see note 1 supra).

7 Immigration Rules para 316A(i)(d) (as added: see note 1 supra).

8 Immigration Rules para 316A(i)(e) (as added: see note 1 supra).

9 Immigration Rules para 316A(i)(f) (as added: see note 1 supra). As to the meaning of 'sole responsibility' see para 125 note 8 ante.

10 Immigration Rules para 316A(i)(g) (as added: see note 1 supra). As to the meaning of 'serious and compelling family or other considerations' see para 125 note 9 ante.

11 Immigration Rules para 316B (as added: see note 1 supra).

12 Immigration Rules para 316A(iii) (as added: see note 1 supra).

13 Immigration Rules para 316A(v) (as added: see note 1 supra).

14 Immigration Rules para 316A(vi) (as added: see note 1 supra).

15 Immigration Rules para 316A(vii) (as added: see note 1 supra).

16 Immigration Rules para 316A(viii) (as added: see note 1 supra).

17 As to these requirements see the Immigration Rules paras 316A(iv), 316B (both as added); and para 121 ante.

18 See the British Nationality Act 1981 s 1(5) (as amended); and para 26 ante. Applications in the family court for contact, residence or adoption may not be used to evade immigration control, and public policy considerations may arise, particularly in approving adoptions which have consequences for a child's nationality: *Re Mohammed Arif* [1968] 1 Ch 643, sub nom *Re A (an infant)*, *Hanif v Secretary of State for Home Affairs* [1968] 2 All ER 145, CA; *Re F* [1990] Fam 125, [1989] 1 All ER 1115, CA; *Re Thania Ahmed* [1991] Imm AR 405 (affd sub nom *Re A (A Minor)* [1991] Imm AR 606, CA) (decision to remove putative ward's father as an illegal entrant); *Re Matondo, Findlay v Matondo* [1993] Imm AR 541; *Re T* [1994] Imm AR 368, CA. However, once the court has established that the application is a genuine one and would confer real benefits and is not simply an immigration device, general policy consideration are of limited effect in deciding whether or not to grant an order: *Re B (adoption order: nationality)* [1999] 2 AC 136, [1999] 2 All ER 576, HL (general considerations of maintaining an effective and consistent immigration policy could not really be put in the balance against the welfare of the child, even if some of the benefits would accrue as a result of a change in immigration status; application for adoption granted).

19 See the Immigration Rules para 298: see para 125 ante.

UPDATE

129 Children seeking leave to enter for the purpose of being adopted

TEXT AND NOTES--As to the requirements for limited leave to enter the United Kingdom with a view to settlement as a child for adoption under the Hague Convention (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 490 et seq) see the Immigration Rules para 316D (paras 316D-316F added by Statement of Changes in Immigration Rules (Cm 5829) (2003) para 15). As to the circumstances in which a person seeking limited leave to enter for such purpose may be admitted for up to 24 months see the Immigration Rules para 316E (as so added); and as to the circumstances in which such a person is to be refused entry see the Immigration Rules para 316F (as so added).

TEXT AND NOTE 3--'For the purpose of being adopted' does not include a de facto adoption: Immigration Rules para 316A (amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 29(a)).

NOTE 3--SI 2001/1251 replaced: Adoption (Bringing Children into the United Kingdom) Regulations 2003, SI 2003/1173. SI 2001/1272 revoked: SI 2005/1313.

TEXT AND NOTE 11--For '12 months' read '24 months': Immigration Rules para 316B (as added) (amended by Statement of Changes in Immigration Rules (Cm 5829) (2003) para 14).

TEXT AND NOTE 12--For 'is unmarried' read 'is unmarried and is not a civil partner': Immigration Rules para 316A(iii) (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 32(a)).

TEXT AND NOTE 13--Head (b) now refers to the marriage or civil partnership (see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 72 (2009) PARA 2): Immigration Rules para 316A(v) (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 32(b)).

TEXT AND NOTE 16--Head (e) refers to the child being adopted in accordance with the law relating to adoption in the United Kingdom: Immigration Rules para 316A(viii) (amended by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 29(b)).

NOTE 18--*Re B* must now be read in the light of Adoption and Children Act 2002 s 1, but it remains the court's obligation to be on its guard against misuse of adoption

proceedings to gain a right of abode: *ASB v MQS (Secretary of State for the Home Department intervening)* [2009] EWHC 2491 (Fam), [2010] 1 FLR 748.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/130. Children born in the United Kingdom who are not British citizens.

130. Children born in the United Kingdom who are not British citizens.

Children born in the United Kingdom¹ after 1 January 1983² of parents³ neither of whom is a British citizen⁴ or is settled in the United Kingdom at the time of the birth are subject to immigration control and require leave to enter or remain if admission or stay is sought⁵. There are three circumstances in which such a child might be granted leave to enter or remain:

- 344 (1) a child who is accompanying or seeking to join or remain with a parent or parents who have, or are given, leave to enter or remain, may be given leave to enter or remain for the same period as that granted to his parent or parents⁶;
- 345 (2) a child who is accompanying or seeking to join or remain with a parent or parents one of whom is a British citizen or has the right of abode in the United Kingdom⁷ may be given indefinite leave to enter or remain⁸;
- 346 (3) a child in respect of whom the parental rights and duties are vested solely in a local authority may be given indefinite leave to enter or remain⁹.

In all circumstances, leave to enter or remain will only be granted if an immigration officer (in the case of leave to enter) or the Secretary of State (in the case of leave to remain) is satisfied that the child is aged under 18, was born in the United Kingdom, is not leading an independent life, is unmarried, and has not formed an independent family unit, and (where the application is for leave to enter) has not been away from the United Kingdom for more than two years¹⁰. Leave must be refused if any of these requirements is not met¹¹.

A child who does not qualify for leave to enter or remain because neither of his parents has current leave, and neither of them is a British citizen or has the right of abode, will be refused leave to enter or remain, even if he satisfies the requirements for entry¹², unless both of his parents are in the United Kingdom and it appears unlikely that they will be removed in the immediate future, and there is no other person outside the United Kingdom who could reasonably be expected to care for him, in which event he may be granted leave to enter or remain for a period not exceeding three months¹³.

A child who was born in the United Kingdom but is not a British citizen, who qualifies for entry clearance, leave to enter or leave to remain under any other part of the Immigration Rules, may be granted entry clearance, leave to enter or leave to remain in accordance with the provisions of that other part¹⁴.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Ie the date of commencement of the British Nationality Act 1981: see para 5 note 1 ante.

3 As to the meaning of 'parent' see para 96 note 7 ante; and see also para 125 note 3 ante.

4 As to British citizens see paras 8, 23-43 ante.

5 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 304. A child born in the United Kingdom who is not a British citizen may remain in the United Kingdom without

leave and is not thereby an overstayer or illegal entrant, but if he leaves the United Kingdom he needs leave to re-enter. The requirements that both parents be in the United Kingdom or that the parent in the United Kingdom has sole responsibility and that there be adequate maintenance and accommodation (see para 121 ante) are not applied to such a child. He may obtain registration as a British citizen if he remains in the United Kingdom for the first ten years of his life: see the British Nationality Act 1981 s 1(4); and para 27 ante.

6 Immigration Rules paras 305(i)(a), 306. Where the parents have or are given periods of leave of different duration, the child may be given leave for whichever period is longer except that if the parents are living apart the child should be given leave for the same period as the parent who has day to day responsibility for him: Immigration Rules para 306.

7 As to right of abode see paras 14, 85 ante.

8 Immigration Rules paras 305(i)(b), 308.

9 Immigration Rules paras 305(i)(c), 308.

10 Immigration Rules paras 305(ii)-(v), 306, 308.

11 Immigration Rules para 309.

12 Ie the requirements of the Immigration Rules para 305(ii)-(v) (see the text and notes 9-10 supra).

13 Immigration Rules para 307.

14 Immigration Rules para 304.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/131. Removal of children.

131. Removal of children.

Although there is no bar to taking action to remove children of any age, Home Office policy provides that an unaccompanied child will not be removed from the United Kingdom¹ if he is under 16 years of age, unless his voluntary departure cannot be arranged²; and no unaccompanied child will be removed from the United Kingdom unless the Secretary of State³ is satisfied that adequate reception and care arrangements are in place in the country to which he is to be removed⁴. Where there is evidence that care arrangements are seriously defective, removal will not take place⁵.

A child who was born in the United Kingdom or who came to the United Kingdom at an early age and has lived there continuously for seven years, and his family, will not normally be removed from the United Kingdom⁶.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 3 Annex M paragraph 7.3 (December 2000). As to proof of age see the *Asylum Policy Instructions* Chapter 2 (Special applications) Section 5 paragraphs 3.7-3.9 (April 2001).

3 As to the Secretary of State see para 2 ante.

4 See the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 3 Annex M paragraph 6.1 (December 2000).

5 *R v Secretary of State for the Home Department, ex p Sujon Miah* (6 December 1994, unreported), QBD. Home Office policy is to grant exceptional leave to remain for four years to unaccompanied children under the

age of 14, following which they can apply for indefinite leave to remain. Children aged 14 to 17 will be granted exceptional leave to remain up to their eighteenth birthday.

6 *Deportation in cases where there are Children with Long Residence* DP 5/96 (reproduced in Butterworths Immigration Law Service para D[651]); *Deportation in cases where there are Children with Long Residence: Policy Modification* announced on 24 February 1999 (reproduced in Butterworths Immigration Law Service para D[1121]). The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8, which makes provision relating to family and private life, may apply. See also para 121 note 13 ante.

UPDATE

131 Removal of children

NOTE 4--The question whether adequate reception facilities are in place in a country to which an unaccompanied child is to be removed may be considered by an immigration judge when assessing the effect of removal on the child's human rights: *CL (Vietnam) v Secretary of State for the Home Department* [2009] EWCA Civ 1551, [2009] 1 WLR 1873, [2008] All ER (D) 105 (Dec).

NOTE 6--A local authority must have regard not only to terms of government policy, but also to reasons underlying that policy, in deciding whether to provide accommodation support to persons not lawfully resident in the United Kingdom: *R (on the application of C) v Birmingham City Council* [2008] EWHC 3036 (Admin), [2009] 1 FCR 657.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/132. Parents and grandparents.

132. Parents and grandparents.

Indefinite leave to enter or remain in the United Kingdom¹ as the dependent relative of a person present and settled² or being admitted for settlement in the United Kingdom may, in general³, only be granted to⁴:

- 347 (1) a widowed mother⁵, father, grandmother or grandfather aged 65 or over⁶;
- 348 (2) parents⁷ or grandparents, travelling together, at least one of whom is aged 65 or over⁸;
- 349 (3) a parent or grandparent aged 65 or over who has remarried but cannot look to the spouse or children of the second marriage for financial support⁹; and
- 350 (4) a parent or grandparent under 65 if living alone¹⁰ outside the United Kingdom in the most exceptional circumstances¹¹ and mainly dependent financially on United Kingdom-settled relatives¹²,

in circumstances where the person in question is financially wholly or mainly dependent on the present and settled relative¹³, has no other close relatives in his own country to whom he could turn for financial support¹⁴, and meets the general requirements for the admission of dependants¹⁵. A person who has been granted limited leave to enter in another capacity may be granted indefinite leave to remain if the Secretary of State¹⁶ is satisfied that the requirements for entry are met¹⁷; however, leave to remain must be refused if any of those requirements is not¹⁸.

- 1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.
 - 2 As to the requirement that a person be 'present and settled' see para 134 post. See also para 121 note 6 ante.
 - 3 Other relatives may be admitted in the most exceptional compassionate circumstances: see para 133 post.
 - 4 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 317(ii).
 - 5 This does not exclude separated mothers who are not widowed, but they must satisfy the other requirements: *R v Immigration Appeal Tribunal, ex p Zainib Bibi* [1987] Imm AR 392 (decision on provisions of the previous rule).
 - 6 Immigration Rules para 317(i)(a), (b).
 - 7 As to the meaning of 'parent' see para 96 note 7 ante. For these purposes 'parent' does not include step-parent, unless the step-parent of the sponsor is seeking admission with the natural parent as the latter's spouse: *Bibi Bagas v Entry Clearance Officer, Bombay* [1978] Imm AR 85; but see *Beckett v Secretary of State for the Home Department* [1990] Imm AR 472, IAT (widow of the sponsor's natural father).
 - 8 Immigration Rules para 317(i)(c).
 - 9 Immigration Rules para 317(i)(d). Note that such a person may only be admitted if the United Kingdom-settled relative is able and willing to maintain him and any spouse or child of the second marriage who would be admissible as a dependant: Immigration Rules para 317(i)(d).
 - 10 'Living alone' does not necessarily mean living on one's own: *Husna Begum v Entry Clearance Officer, Dhaka* [2001] INLR 115, CA.
 - 11 See *R v Immigration Appeal Tribunal, ex p Joseph* [1988] Imm AR 329. For elderly relatives the circumstances may include illness, incapacity, isolation and poverty: see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 5 Annex V paragraph 2 (December 2000). The test should not, however, be set so high as to defeat the purpose of the rule which is intended to assist those who are unable to care for themselves, or suffer isolation and social stigma without the support of their family: *Husna Begum v Entry Clearance Officer, Dhaka* [2001] INLR 115, CA. Cultural considerations are relevant: *Husna Begum v Entry Clearance Officer, Dhaka* supra. The proposition that the rule could not apply to cases where family members had deliberately abandoned a member of their family in their country of origin and chosen to live in the United Kingdom was not universally applicable: *Husna Begum v Entry Clearance Officer, Dhaka* supra. All the elements of hardship must be looked at cumulatively: *Entry Clearance Officer, Lagos v Agoro* (21 January 1998, unreported) IAT; *Nessa v Entry Clearance Officer, Dhaka* (23 February 1999, unreported), IAT.
 - 12 Immigration Rules para 317(i)(e).
 - 13 Immigration Rules para 317(iii). 'Wholly or mainly dependent' connotes dependence by necessity and not by choice (*Zaman v Entry Clearance Officer, Lahore* [1973] Imm AR 71; *Musa (Hasan Bibi) v Entry Clearance Officer, Bombay* [1976] Imm AR 28) or contrivance (*Chavda v Entry Clearance Officer Bombay* [1978] Imm AR 40), but does not exclude dependency that is created by a bona fide act for other purposes (*Bibi v Entry Clearance Officer, Dhaka* [2000] Imm AR 385, CA). The sponsor on whom the applicant is wholly or mainly dependent must also be the United Kingdom-settled relative: *Shabir v Visa Officer, Islamabad* [1989] Imm AR 185 (dependency upon brother but only mother was settled; refusal of leave upheld). The applicant must be directly dependent on the relative in the United Kingdom and not simply part of a family which is so dependent: *Bibi v Entry Clearance Officer, Dhaka* supra. Where the applicant has some assets but receives assistance from the United Kingdom-settled relative, it is necessary to assess whether, if realised, those assets are sufficient to meet the applicant's needs: *R v Immigration Appeal Tribunal, ex p Patel* (1982) Times, 7 April, QBD. Support which supplements an adequate income and a reasonable lifestyle is not likely to qualify as financial dependence (*Entry Clearance Officer, Colombo v Sithamparapillai* (7 November 1997, unreported), IAT, but if it is essential to help achieve a reasonable lifestyle it will (*Immigration Directorates' Instructions* Chapter 8 (Family members) Section 5 Annex V paragraph 2 (December 2000)). Someone whose needs for accommodation, clothing, food and other necessities, including social comfort and support in old age, are met by another is financially dependent on that person: *Bibi v Entry Clearance Officer, Dhaka* supra; *Desai v Entry Clearance Officer* [2000] INLR 10, CA. Thus emotional dependency is relevant because it may translate into financial dependency if money must be spent to meet the emotional needs: *Entry Clearance Officer, Islamabad v Bi (Rehmat)* (21 January 1998, unreported), IAT. See also *R v Immigration Appeal Tribunal, ex p Bastiampillai* [1983] 2 All ER 844, [1983] Imm AR 1; *R v Immigration Appeal Tribunal, ex p Dadhibai* (24 October 1983, unreported), QBD (both decided in relation to the previous rule).
- 'Mainly dependent' does not call for a mathematical calculation but a rounded appraisal: *Desai v Entry Clearance Officer* supra.

14 Immigration Rules para 317(v). A nephew may be a close relative for these purposes: *Ladha v Secretary of State for the Home Department* [1988] Imm AR 284, CA. The scope of the previous rule was not limited to a home and financial support, and the close relatives defined in it were those an applicant could turn to in the event of any sort of need which an elderly person may have (such as loneliness, isolation, chronic illness, accident or sudden emergency) and which those relatives could provide: *R v Immigration Appeal Tribunal, ex p Swaran Singh* [1987] 3 All ER 690, [1987] 1 WLR 1394, [1987] Imm AR 563, CA; *R v Immigration Appeal Tribunal, ex p Sayana Khatun* [1989] Imm AR 482; *R v Immigration Appeal Tribunal, ex p Kara* [1989] Imm AR 120. The current rule limits the needs to financial support, but many of the needs identified in these cases may translate into a financial requirement: *Entry Clearance Officer, Islamabad v Bi (Rehmat)* (21 January 1998, unreported), IAT; *Desai v Entry Clearance Officer* [2000] INLR 10, CA. Interpretation of the rule requires that it be recognised as one of broad humanity which should be humanely administered: *R v Immigration Appeal Tribunal, ex p Swaran Singh* supra.

15 As to these requirements see the Immigration Rules paras 317(iv)-(iva), (vi), (para 317(iv), (iva) as added and substituted); and para 121 ante.

16 As to the Secretary of State see para 2 ante.

17 Immigration Rules para 318. As to requirements for entry see the Immigration Rules para 371(i)-(v) (as amended); the text and notes 1-15 supra; and para 121 ante.

18 Immigration Rules para 319.

UPDATE

132 Parents and grandparents

TEXT AND NOTE 9--Now, head (3) a parent or grandparent aged 65 or over who has entered into a second relationship of marriage or civil partnership but cannot look to the spouse, civil partner or children of that second relationship for financial support; and where the person settled in the United Kingdom is able and willing to maintain the parent or grandparent and any spouse or civil partner or child of the second relationship who would be admissible as a dependant: Immigration Rules para 317(i)(d) (substituted by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 33). For the meaning of 'civil partner' see PARA 121.

NOTE 5--See also *MB (Somalia) v Entry Clearance Officer* [2008] EWCA Civ 102, [2008] All ER (D) 285 (Feb) (range of class of separated women so wide that should not be assimilated to widows).

NOTE 11--See *Mukarkar v Secretary of State for the Home Department* [2006] EWCA Civ 1045, [2006] All ER (D) 367 (Jul).

NOTE 18--Immigration Rules para 319 amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) para 33.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/E. ADMISSION OF PERSONS FOR SETTLEMENT/133. Other dependent relatives in exceptional circumstances.

133. Other dependent relatives in exceptional circumstances.

Indefinite leave to enter or remain in the United Kingdom¹ may be granted to the son, daughter, sister, brother, uncle or aunt of a person present and settled² or being admitted for settlement in the United Kingdom in the most exceptional compassionate circumstances³, provided that that person:

- 351 (1) is over the age of 18 and living alone outside the United Kingdom⁴;
- 352 (2) is mainly dependent financially on relatives settled in the United Kingdom or is financially wholly or mainly dependent on the present and settled relative⁵;
- 353 (3) has no other close relatives in his own country to whom he could turn for financial support⁶; and
- 354 (4) meets the general requirements for the admission of dependants⁷.

A person who has been granted leave to enter in another capacity may be granted indefinite leave to remain if the Secretary of State⁸ is satisfied that the substantive requirements for entry are met⁹: however leave to remain must be refused if any of those requirements is not met¹⁰.

- 1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.
- 2 As to the requirement that a person be 'present and settled' see para 134 post; and see also para 121 note 6 ante.
- 3 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 317(i)(f), (ii). As the most exceptional compassionate circumstances see para 132 note 11 ante. This rule is intended to be exhaustive of the categories of relative admissible under the Immigration Rules (see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 5 Annex W (December 2000)). Others would have to seek admission through the exercise of discretion outside the Immigration Rules.
- 4 Immigration Rules para 317(i)(f). See *Husna Begum v Entry Clearance Officer, Dhaka* [2001] INLR 115, CA. As to the meaning of 'living alone' see para 132 note 10 ante.
- 5 Immigration Rules para 317(i)(f), (iii). As to the meaning of 'wholly or mainly dependent' see para 132 note 13 ante.
- 6 Immigration Rules para 317(v). As to who may be a close relative for these purposes see para 132 note 14 ante.
- 7 As to these requirements see the Immigration Rules paras 317(iv)-(iva), (vi), 318, 319 (para 317(iv), (iva) as added and substituted); and para 121 ante.
- 8 As to the Secretary of State see para 2 ante.
- 9 Immigration Rules para 318. As to the requirements for entry see the Immigration Rules para 371(i)-(v) (as amended); the text and notes 1-7 supra; and para 121 ante.
- 10 Immigration Rules para 319.

UPDATE

133 Other dependent relatives in exceptional circumstances

NOTE 10--Immigration Rules para 319 amended: see PARA 132.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/F. ACQUIRING AND MAINTAINING SETTLED STATUS/134. Settlement after limited leave.

F. ACQUIRING AND MAINTAINING SETTLED STATUS

134. Settlement after limited leave.

A person is 'settled in the United Kingdom' when he is ordinarily resident¹ in the United Kingdom² without being subject under the immigration laws to any restriction on the period for which he may remain³. Persons who are in the United Kingdom and subject to immigration control automatically cease to be subject to such a restriction when they are granted indefinite leave to remain.

A person (together with any spouse and children admitted as dependants⁴) may be granted indefinite leave to remain if he has been admitted and allowed to remain in the United Kingdom and has so remained for a continuous period of four years⁵:

- 355 (1) as a work permit holder⁶;
- 356 (2) in non-work permit employment as a representative of an overseas newspaper, news agency or broadcasting organisation, a sole representative of an overseas firm, a private servant in a diplomatic household, a domestic worker in a private household, an employee of an overseas government or international organisation, a minister of religion, missionary or member of a religious order or operational ground staff of an overseas airline⁷;
- 357 (3) as a person with United Kingdom ancestry⁸;
- 358 (4) in business or self-employment⁹;
- 359 (5) as an investor¹⁰;
- 360 (6) as a writer, composer or artist¹¹, or
- 361 (7) as a retired person of independent means¹².

The grant of settlement involves an exercise of discretion but will normally be granted if the requirements of the Immigration Rules are met, unless a general ground for refusing leave is identified and relied upon¹³. A person who is settled is no longer restricted to the particular capacity in which he was admitted.

Spouses, unmarried partners, bereaved spouses and unmarried partners, children, dependent relatives, and non-custodial parents exercising access rights, of persons settled in the United Kingdom or being admitted for settlement may also apply for variation of leave to enter or remain for settlement¹⁴.

Settlement may also be granted to refugees and to other categories of persons outside the Immigration Rules¹⁵.

1 'Ordinary residence' refers to a person's abode in a particular place or country which he has adopted voluntarily and for settled (but not indefinite) purposes as part of the regular order of his life for the time being (whether of short or long duration). Thus intention is relevant: *Shah v Barnet London Borough Council* [1983] 2 AC 309, [1983] 1 All ER 226, HL (student held to be ordinarily resident). Ordinary residence is to be distinguished from domicile which requires an intention permanently to reside in one country: *Stransky v Stransky* [1954] 2 All ER 536, [1954] 3 WLR 123. It is possible to be ordinarily resident in two countries: *Re Norris, ex p Reynolds* (1888) 4 TLR 452, CA; *Fox v Stirk* [1970] 2 QB 463, [1970] 3 All ER 7, [1970] 3 WLR 147, CA. Ordinary residence is not defeated by temporary breaks in the continuity of residence if the person intends to return to the United Kingdom: *R v Immigration Appeal Tribunal, ex p Siggins* [1985] Imm AR 14 (eight-month absence insufficient to break ordinary residence); *R v Edgehill* [1963] 1 QB 593, [1963] 1 All ER 181, [1963] 2 WLR 170, CA (six months' imprisonment abroad did not prevent the applicant being ordinarily or continuously resident). An intention to reside for the foreseeable future in another country will end ordinary residence in the United Kingdom: *R v Immigration Appeal Tribunal, ex p Ng* [1986] Imm AR 23, QBD. At common law ordinary residence does not depend upon immigration status (*Shah v Barnet London Borough Council* supra); however, there can be no ordinary residence if presence is unlawful (*R v Secretary of State for the Home Department, ex p Margueritte* [1983] QB 180, [1982] 3 All ER 909, CA; *Immigration Appeal Tribunal v Chelliah* [1985] Imm AR 192, CA). A person is not ordinarily resident in the United Kingdom if there is breach of the immigration laws (Immigration Act 1971 s 33(2); British Nationality Act 1981 s 50(5)), other than for the purposes of exemption from deportation, whereby a person who became ordinarily resident in the United Kingdom does not cease to be so by reason of remaining in breach of the immigration laws (Immigration Act 1971 s 7(2)). For the meaning of 'immigration laws' see para 26 note 9 ante.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 Immigration Act 1971 s 33(2A) (added by the British Nationality Act 1981 s 39(6), Sch 4 para 7). This is subject to the Immigration Act 1971 s 8(5) (as amended) (person is not regarded as 'settled' when benefiting under former immigration laws from temporary exemption from leave to enter requirements). See also paras 22 notes 15-16 ante, 26 note 9 ante. Thus a person who has indefinite leave to remain is settled in the United Kingdom and the phrases are sometimes used interchangeably. A person is 'settled in the United Kingdom' if he is either ordinarily resident in the United Kingdom without having entered or remained in breach of the immigration laws or, despite having entered or remained in breach of the immigration laws, he has subsequently entered lawfully or has been granted leave to remain, is ordinarily resident in the United Kingdom, and is free from any restriction on the period for which he may remain (except that a person entitled to an exemption under the Immigration Act 1971 s 8 (as amended) (see paras 87-92 ante) (otherwise than as a member of the home forces) is not to be regarded as settled in the United Kingdom (unless he is the subject of an order under s 8(5A) (as added) providing for him or a class of persons of which he is a member to be in specified circumstances regarded as settled in the United Kingdom (see para 87-92 ante))); Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 6. See also para 26 note 9 ante. A person coming for settlement must intend to become ordinarily resident: *Bibi v Immigration Appeal Tribunal* [1988] Imm AR 298, CA.

As to the settlement of EEA nationals and their family members see the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 8; and para 237 post.

4 As to the admission of spouses, children and other dependants see para 122 et seq ante.

5 Short absences abroad do not break continuity, but where absences are too frequent or too long further limited leave may be granted instead: see the *Immigration Directorates' Instructions* Chapter 5 (Employment) Section 1 Annex F (November 2000).

6 Immigration Rules para 134. As to work permits see para 109 ante. As to the right of work permit holders to enter or remain in the United Kingdom see para 110 ante.

7 Immigration Rules paras 142, 150, 158, 159A, 167, 176, 184. As to the right of such persons to enter or remain in the United Kingdom and to take relevant employment see para 112 ante. Employment while exempt from immigration control does not qualify the employee for indefinite leave to remain: *Hussain v Secretary of State for the Home Department* [1987] Imm AR 333, IAT. Note that persons admitted for non-work permit employment as exchange teachers, language assistants, crew members and seasonal workers cannot be granted indefinite leave to remain in such a category: see para 112 ante.

8 Immigration Rules para 192. As to the right of such persons to enter or remain in the United Kingdom see para 112 ante.

9 Immigration Rules paras 209, 222. As to the right of such persons to enter or remain in the United Kingdom see paras 113-114 ante.

10 Immigration Rules para 230. As to the right of such persons to enter or remain in the United Kingdom see para 115 ante.

11 Immigration Rules para 238. As to the right of such persons to enter or remain in the United Kingdom see para 118 ante.

12 Immigration Rules para 269. As to the right of such persons to enter or remain in the United Kingdom see para 117 ante.

13 See the Immigration Rules para 322; and para 137 post.

14 See the Immigration Rules paras 248E, 287, 288, 295H, 295N, 299, 308, 312, 318 (para 287 substituted, and paras 295H, 295N added, by Statement of Changes in Immigration Rules (Cm 4851) (2000) paras 22, 31, 32); and para 122 et seq ante.

15 Refugees are granted immediate indefinite leave to enter or remain, while others who do not qualify for refugee status but whom the Secretary of State accepts should not be required to return may be granted four years' exceptional leave to enter or remain and may then obtain settlement: see para 238 et seq post. Others granted indefinite leave to remain by policy include those benefiting from the long residence concession whereby settlement may be granted outside the Immigration Rules to persons who have lived in the United Kingdom for a continuous period of ten years (if lawfully) or 14 years (if any part of the period was unlawful) (see the *Immigration Directorates' Instructions* Chapter 18 (The long residence concession) (December 2000)); British overseas citizens in the United Kingdom with limited leave for seven years (*R v Secretary of State for the Home Department, ex p Patael* [1993] Imm AR 257, QBD); and those benefiting from the domestic violence

concession (see para 122 ante). Persons benefiting from a policy precluding removal on family life grounds are also eligible: see para 131 ante.

UPDATE

134 Settlement after limited leave

TEXT AND NOTES--For further provision concerning long residence in the United Kingdom see now Immigration Rules paras 276A-276C (Immigration Rules paras 276A-276C added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 538) para 10; Immigration Rules paras 276A1-276A4 added by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 14; Immigration Rules para 276B amended by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 12; and Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) para 15). See also *ZH (Bangladesh) v Secretary of State for the Home Department* [2009] EWCA Civ 8, [2009] All ER (D) 188 (Jan); *FH (Bangladesh) v Secretary of State for the Home Department* [2009] EWCA Civ 385, [2009] All ER (D) 112 (May).

A person is not to be treated as having at least 10 years continuous lawful residence in the United Kingdom where he overstays for a few weeks, in circumstances where such period arises in consequence of the delay between an application and grant of further leave to remain and the expiry of a previous leave to remain: *MD (Jamaica) v Secretary of State for the Home Department*; *GE (Canada) v Secretary of State for the Home Department* [2010] EWCA Civ 213, [2010] All ER (D) 88 (Mar).

NOTE 3--SI 2000/2326 reg 8 now Immigration (European Economic Area) Regulations 2006, SI 2006/1003, reg 15.

TEXT AND NOTE 5--Now five years: Immigration Rules paras 190, 192, 209, 222, 230, 238, 269 (all amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1016) para 12). Also, under Immigration Rules paras 192, 209, 222, 230, if he has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom (see PARA 124), unless he is under the age of 18 or aged 65 or over at the time he makes his application: Immigration Rules paras 192, 209 (amended by Statement of Changes in Immigration Rules (HC Paper (2006-07) no 398) paras 5, 7, 9, 10).

NOTE 6--As to the Immigration Rules para 134 see further PARA 110.

NOTE 7--As to the Immigration Rules paras 142, 150, 158, 167, 176, 184 see further PARA 112.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iii) Requirements for Admission/F. ACQUIRING AND MAINTAINING SETTLED STATUS/135. Returning residents.

135. Returning residents.

A person seeking leave to enter the United Kingdom¹ as a returning resident² may be admitted for settlement provided the immigration officer is satisfied that he had indefinite leave to enter or remain in the United Kingdom when he last left³, that he has not been away for longer than two years⁴, that he did not receive assistance from public funds towards the cost of leaving the United Kingdom⁵, and that he now seeks admission for the purpose of settlement⁶. A person who cannot benefit from these provisions by reason only of having been away from the United

Kingdom too long may nevertheless be admitted as a returning resident if, for example, he has lived in the United Kingdom for most of his life⁷.

A person with indefinite leave to enter or remain who accompanies his spouse or unmarried partner who is a member of Her Majesty's forces serving overseas, a permanent member of Her Majesty's diplomatic service, a comparable United Kingdom-based staff member of the British Council, or a staff member of the Department of International Development who is a British citizen or is settled in the United Kingdom, may be admitted as a returning resident notwithstanding that he has remained outside the United Kingdom for over two years and his travel was paid for out of public funds⁸.

A person whose limited leave has lapsed and who seeks re-entry during the period of the earlier leave has no claim to admission as a returning resident, and his application to re-enter the United Kingdom will be considered in the light of all the relevant circumstances⁹.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 The importance of the returning residents' rule (ie Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 18) has been diminished in practice by the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 13, which, read with Immigration Rules para 20A (as added) provides that leave to enter or remain granted for longer than six months, and indefinite leave to remain, does not lapse when its holder leaves the United Kingdom unless he remains outside the United Kingdom for more than two years (see para 86 ante).

3 Immigration Rules para 18(i); *Secretary of State for the Home Department, ex p Akinrujoma* [1988] Imm AR 590. The lapsing of indefinite leave to remain on leaving the common travel area by virtue of the Immigration Act 1971 s 3(4) (see para 86 ante) often led to returning residents who returned for short periods (eg whilst working or studying abroad) being granted limited leave as visitors, effectively depriving them of settled status on the next occasion they returned: see eg *R v Secretary of State for the Home Department, ex p Tolba* [1988] Imm AR 78, QBD; *R v Immigration Appeal Tribunal, ex p Coomasaru* [1983] 1 All ER 208, [1982] Imm AR 77, CA. For circumstances where discretion may be exercised to restore settled status after arrival see the *Immigration Directorates' Instructions* Chapter 1 (General provisions) Section 3 Annex L (November 2000). As to the common travel area see para 94 ante.

4 Immigration Rules para 18(ii). Indefinite leave to enter or remain lapses if the holder is absent from the United Kingdom for longer than two years: Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 13(4).

5 Immigration Rules para 18(iii). As to contributions for expenses of persons returning abroad see the Immigration Act 1971 s 29 (as amended); and para 86 ante.

6 Immigration Rules para 18(iv). As a result of the introduction of non-lapsing leave (see note 1 supra) the burden is now on the immigration officer to establish that this requirement is not satisfied if he wishes to cancel indefinite leave to remain. Before the introduction of non-lapsing leave, immigration officers were under no duty to offer admission for settlement if the passenger did not ask for it (*R v Secretary of State for the Home Department, ex p Tolba* [1988] Imm AR 78, QBD), but if the intention of the person was to return for settlement and he had indefinite leave to remain then he was entitled to returning resident status (*R v Immigration Appeal Tribunal, ex p Coomasaru* [1983] 1 All ER 208, [1982] Imm AR 77, CA). The fact that a person was working outside the United Kingdom for a substantial or indefinite period did not prevent him qualifying under the returning resident rule because he continued to be ordinarily resident in the United Kingdom: *R v Secretary of State for the Home Department, ex p Chugtai* [1995] Imm AR 559. A spouse cannot claim entry as a returning resident by relying on the unlawful residence of the other spouse: *R v Secretary of State for the Home Department, ex p Botta* [1987] 2 CMLR 189, [1987] Imm AR 80 (the wife of an European Community national who was subject to a deportation order was not a returning resident). If, on a person's return, the immigration officer concludes that the original indefinite leave to remain was obtained by deception, leave may be refused or cancelled: *Sattar v Secretary of State for the Home Department* [1988] Imm AR 190, CA.

7 Immigration Rules para 19. When exercising this discretion an immigration officer should consider, inter alia, the length of the person's earlier stay, the length of time the person has been away from the United Kingdom, the reason why that absence has extended longer than two years, the purpose of the return, the nature of the family ties in the United Kingdom and the extent to which the person has maintained them during his absence, whether the person has a house in the United Kingdom, and whether it is his intention to remain and live there: see *R v Secretary of State for the Home Department, ex p Ademuyiwa* [1986] Imm AR 1. As to the application of factors such as strong connections, length of residence and ties where the applicant's absence was involuntary see *Entry Clearance Officer, Dacca v Arman Ali* [1981] Imm AR 51. See also

Immigration Officer, Heathrow v Gomez (5 October 2000, unreported), IAT (parental obstruction). This approach is adopted by the *Immigration Directorates' Instructions* Chapter 1 (General provisions) Section 3 Annex K paragraph 2.1 (November 2000), which cites further examples of the circumstances in which discretion should be exercised favourably. 'Life' in this context does not mean adult life only: *Entry Clearance Officer, Kingston v Peart* [1979-80] Imm AR 41. The length of absence from the United Kingdom is material; the longer a person has been away, the closer the connection that needs to be shown: *R v Immigration Appeal Tribunal, ex p Saffiullah* [1986] Imm AR 424, DC.

8 Immigration Rules para 19A (added by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 22; and substituted by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 2).

9 Immigration Rules para 20 (amended by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 6). See also para 137 post. With the introduction of non-lapsing leave by the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, the only persons whose leave lapses when they leave the common travel area are visitors, fiancés and fiancées; and a visitor's visa is good for multiple entries (see art 4: and para 96 ante), so the only persons to whom these provisions are likely to apply are fiancés and fiancées.

UPDATE

135 Returning residents

TEXT AND NOTE 8--For 'spouse or unmarried partner' read 'spouse, civil partner, unmarried partner or same-sex partner': Immigration Rules para 19A (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 2). For the meaning of 'civil partner' see PARA 121.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iv) Refusal of Entry Clearance; Refusal or Variation of Leave to Enter or Remain/136. General grounds for refusal of entry clearance or leave to enter.

(iv) Refusal of Entry Clearance; Refusal or Variation of Leave to Enter or Remain

136. General grounds for refusal of entry clearance or leave to enter.

A person must be refused entry clearance or leave to enter the United Kingdom¹ if:

- 362 (1) he fails to satisfy the particular entry requirements specified in relation to his particular category of entrant²;
- 363 (2) he is excluded under the United Kingdom's international obligations³;
- 364 (3) he is seeking entry for a purpose not covered by the Immigration Rules⁴;
- 365 (4) he is the subject of a deportation order⁵;
- 366 (5) he fails to produce a valid national passport or other document satisfactorily establishing his identity and nationality⁶;
- 367 (6) having arrived in the United Kingdom or sought entry through the Channel Tunnel with the intention of entering any other part of the common travel area, he fails to satisfy the immigration officer that he is acceptable to the immigration authorities there⁷;
- 368 (7) being a visa national, he fails to produce to the immigration officer a passport or other identity document endorsed with a valid and current United Kingdom entry clearance issued for the purpose for which entry is sought⁸;
- 369 (8) his exclusion is deemed conducive to the public good by virtue of a personal direction by the Secretary of State⁹; or

370 (9) his exclusion is desirable for medical reasons¹⁰.

The mandatory terms of these rules do not prevent the exercise of discretion by immigration officers to admit persons outside the Immigration Rules¹¹.

A person is normally refused entry clearance or leave to enter, at the immigration officer's discretion, if:

- 371 (a) on arrival, he fails to furnish the immigration officer with such information as may be required for the purpose of deciding whether he requires leave to enter and, if so, whether and on what terms leave should be given¹²;
- 372 (b) seeking leave outside the United Kingdom, he fails to supply any information, documents, copy documents or medical reports requested by an immigration officer¹³;
- 373 (c) as a returning resident, he fails to meet the applicable requirements or fails to satisfy the immigration officer that he seeks leave to enter for the same purpose as that for which his earlier leave was granted¹⁴;
- 374 (d) he produces a passport or travel document issued by an unrecognised entity or which is otherwise unacceptable¹⁵;
- 375 (e) he has failed to observe a time limit or conditions attached to a previous leave to enter or remain¹⁶;
- 376 (f) he has obtained a previous leave to enter or remain by deception¹⁷;
- 377 (g) he fails to satisfy the immigration officer that he will be admitted to another country after a stay in the United Kingdom¹⁸;
- 378 (h) on his seeking to enter the United Kingdom, his sponsor refuses to give an undertaking to be responsible for his maintenance and accommodation¹⁹;
- 379 (i) false representations have been made, or material facts withheld, in the making of a work permit application²⁰;
- 380 (j) being a child aged under 18 seeking leave to enter otherwise than in conjunction with an application made by his parents or legal guardian, he fails to provide the immigration officer, when required to do so, with written consent to the application from his parents or legal guardian²¹;
- 381 (k) he refuses to undergo a medical examination²²;
- 382 (l) he has been convicted of a serious criminal offence²³; or
- 383 (m) his exclusion can be justified as conducive to the public good²⁴.

Advance leave to enter, including leave to enter conferred by entry clearance, may be cancelled in specified circumstances²⁵; and, similarly, in specified circumstances leave to enter may be refused to the holder of an entry clearance which does not operate as leave to enter²⁶.

Power to refuse leave to enter, or to cancel leave to enter or remain which is already in force, may not be exercised by an immigration officer acting on his own, but the authority of a chief immigration officer or an immigration inspector must always be obtained²⁷.

1 As to entry clearance generally see para 96 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to the various categories of entrant and the entry requirements applicable to them see para 99 et seq ante.

3 Immigration Act 1971 s 8B(1) (s 8B added by the Immigration and Asylum Act 1999 s 8). As to these obligations and the exclusion of persons thereunder see the Immigration Act 1971 s 8B(2)-(8) (as added); and para 86 ante.

4 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 320(1). As to the purposes which are covered by the Immigration Rules see para 99 et seq ante.

5 Immigration Rules para 320(2). As to deportation see para 160 et seq post. If the deportation was based on a conviction which is spent, refusal need not be automatic: see the *Immigration Directorates' Instructions* Chapter 9 (General grounds for the refusal of entry clearance, leave to enter or variation of leave to enter or remain) Section 2 paragraph 3.3 (December 2000).

6 Immigration Rules para 320(3). As to passports and identity documents see para 78 ante. As to the requirements for admission to the United Kingdom see para 93 ante.

7 Immigration Rules para 320(4). As to the common travel area and travel within that area see para 94 ante.

8 Immigration Rules para 320(5). As to visa nationals see para 96 ante.

9 Immigration Rules para 320(6). As to the Secretary of State see para 2 ante. The Secretary of State's personal decision leads to mandatory refusal, but an immigration officer also has a discretion to refuse on the ground that exclusion is conducive to the public good under Immigration Rules para 320(19): see the text and note 24 infra.

As to the exclusion of EEA nationals on this ground see para 226 post.

See *R (on the application of Farrakhan) v Secretary of State for the Home Department* [2001] EWCA Civ 606, [2002] 3 WLR 481, CA.

10 Immigration Rules para 320(7). This ground does not apply to a person settled in the United Kingdom or if the immigration officer is satisfied that there are strong compassionate reasons justifying admission: Immigration Rules para 320(7). The medical reasons relied on must be confirmed by the medical inspector: Immigration Rules para 320(7).

See *Ali Mohazeb v Immigration Officer, Harwich* [1990] Imm AR 555, IAT (previous version of the rule held to fetter the discretion of immigration officers but intra vires nevertheless: immigration officer left to consider compassionate reasons); *R v Secretary of State for the Home Department, ex p Ounejma* [1989] Imm AR 75, DC; *Al-Tuwaidji v Chief Immigration Officer, Heathrow* [1974] Imm AR 34. Returning residents (see para 135 ante) should not be refused leave to enter, or have existing leave to enter or remain cancelled, on medical grounds; however, where a person would be refused leave to enter or have existing leave to enter or remain cancelled on medical grounds if he were not a returning resident, or in any case where it is decided on compassionate grounds not to exercise the power to refuse leave to enter or to cancel existing leave to enter or remain, or in any other case where the medical inspector so recommends, the immigration officer should give the person a notice requiring him to report to the medical officer of environmental health designated by the medical officer with a view to further examination and any necessary treatment: Immigration Rules para 38 (amended by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 13). Entry clearance officers (see para 96 ante) have the same discretion as immigration officers to refer for medical examination and the same principles apply in deciding whether or not to issue an entry clearance: Immigration Rules para 39. As to medical examinations generally see para 149 post. As to strong compassionate circumstances militating against refusal see *Entry Clearance Officer, Bombay v Sacha* [1973] Imm AR 5; *Parvez v Immigration Officer, London (Heathrow) Airport* [1979-80] Imm AR 84. For Home Office policy on the admission of persons suffering from HIV or AIDS see the *Immigration Directorates' Instructions* Chapter 1 (General provisions) Section 8 paragraph 2.5 (June 2001). See also *Davoren v Secretary of State for the Home Department* [1996] Imm AR 307.

11 See *Kuku v Secretary of State for the Home Department* [1990] Imm AR 27, CA; *Immigration Officer, Heathrow v Aday-Bosompra* [1992] Imm AR 579, IAT.

12 Immigration Rules para 320(8).

13 Immigration Rules para 320(8A) (added by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 14). As to the use of the terms 'immigration officer' and 'entry clearance officer' see the Immigration Rules para 26.

14 Immigration Rules para 320(9) (amended by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 31) para 10). As to the requirements which returning residents must satisfy see the Immigration Rules para 18; and para 135 ante.

15 Immigration Rules para 320(10). This provision covers: (1) passports and travel documents issued by territorial entities or authorities not recognised by the United Kingdom government as states or not dealt with as governments, or which do not accept valid United Kingdom passports for the purpose of their own immigration control; and (2) passports and travel documents which do not comply with international passport practice. See further para 93 ante.

16 Immigration Rules para 320(11). See also *R v Secretary of State for the Home Department, ex p Sadiq* [1990] Imm AR 364, QBD (student working in breach of conditions during earlier stay); *Marquez v Immigration Officer, Gatwick North* [1992] Imm AR 354. Recourse to public funds during an earlier stay will ground refusal only where it has been persistent: see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 1 Annex H paragraph 9 (December 2000).

17 Immigration Rules para 320(12). The deception may have been practised by a third party.

18 Immigration Rules para 320(13). This provision does not apply in the case of a person eligible for admission for settlement or a person eligible for admission as the spouse of a person present and settled or being admitted for settlement (see the Immigration Rules para 282; and para 122 ante): Immigration Rules para 320(13). Restrictions may be imposed on the length of stay of holders of restricted passports or travel documents: see para 93 ante.

19 Immigration Rules para 320(14). As to this requirement see the Immigration Rules para 35; and para 93 ante.

20 Immigration Rules para 320(15). As to work permits see paras 109-110 ante. This provision applies whether or not the deception or withholding takes place with the holder's knowledge (Immigration Rules para 320(15)), and is necessary because work permits do not constitute entry clearance for the purposes of the Immigration Act 1971 s 33(1) (as amended) (see para 96 ante).

21 Immigration Rules para 320(16). Written consent is not required in the case of unaccompanied minors seeking asylum: Immigration Rules para 320(16). The Secretary of State's policy is not to remove unaccompanied children from the United Kingdom unless satisfied that adequate reception and care arrangements are in place in the country to which the child is to be removed: see the *Immigration Directorates' Instructions* Chapter 8 (Family members) Section 3 Annex M paragraph 6.1 (December 2000). See also *Re Sujon Miah* (6 December 1994, unreported), QBD.

22 Immigration Rules para 320(17). This ground does not apply to persons settled in the United Kingdom: Immigration Rules para 320(17). A person who intends to remain in the United Kingdom for more than six months should normally be referred to the medical inspector for examination; and if he produces a medical certificate, he should be advised to hand it to the medical inspector: Immigration Rules para 36. Any person who mentions health or medical treatment as a reason for his visit, or who appears not to be in good mental or physical health, should be referred to the medical inspector; and the immigration officer has a discretion (to be exercised sparingly) to refer for medical examination in any other case: Immigration Rules para 36. An entry clearance officer has the same power to refer a person seeking entry clearance for medical examination: Immigration Rules para 39.

23 Immigration Rules para 320(18). The reference in the text to having been convicted of a serious criminal offence is a reference to having been convicted in any country including the United Kingdom of an offence which, if committed in the United Kingdom, is punishable with imprisonment for a term of 12 months or any greater punishment or, if committed outside the United Kingdom, would be so punishable if the conduct constituting the offence had occurred in the United Kingdom: Immigration Rules para 320(18). This ground may be waived where the immigration officer is satisfied that admission would be justified for strong compassionate reasons (Immigration Rules para 320(18)), but the discretion to admit may still be exercised in the absence of such reasons (*R v Secretary of State for the Home Department, ex p Bindel* [2001] Imm AR 1, QBD (Secretary of State's decision to admit convicted rapist to participate in boxing match upheld)).

24 Immigration Rules para 320(19). The immigration officer's discretion in this regard may be exercised if, for example, in the light of the character, conduct or associations of the person seeking leave to enter it is undesirable to give him leave to enter: Immigration Rules para 320(19). This may involve reference to a past instance of obtaining leave by deception: *Sattar v Secretary of State for the Home Department* [1988] Imm AR 190, CA; *R v Secretary of State for the Home Department, ex p Sanyaolu* [1993] Imm AR 505. See also *R v Immigration Appeal Tribunal, ex p Ajaib Singh* [1978] Imm AR 59, DC; *R v Immigration Officer, ex p Ajekukor* [1982] Imm AR 3. A breach of a condition attached to limited leave on a previous visit to the United Kingdom does not on its own justify a refusal of leave to enter on a subsequent occasion on the ground that the exclusion is conducive to the public good (*Olufosoye v Immigration Officer, Heathrow* [1992] Imm AR 141), but may be sufficient on its own ground (see the text and note 16 supra). See also *Nkiti v Immigration Officer, Gatwick* [1989] Imm AR 585, CA (applicant's acquittal on smuggling charges did not oblige the immigration officer to conclude that he was innocent and that his exclusion was not conducive to the public good since (among other things) the standard of proof was different); *R v Secretary of State for the Home Department, ex p Kwapong* [1993] Imm AR 569 (facilitating the illegal entry of another passenger justified exclusion on the ground that the exclusion was conducive to the public good). This ground is to be contrasted with mandatory refusal where the Secretary of State has personally directed exclusion (see the text and note 9 supra). As to the exclusion of EEA nationals on this ground see para 226 post.

25 Where a person arrives in the United Kingdom with leave to enter or remain which is already in force, an immigration officer may cancel that leave: Immigration Rules para 10B (added by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 4). Grounds for cancellation of leave to enter or remain which is in force on a person's arrival are: (1) such a change of circumstances since the leave was given that it should be cancelled; (2) that the leave was obtained as a result of false information given by the holder or by that person's failure to disclose material facts; (3) medical grounds (unless the person is settled in the United Kingdom or the Secretary of State is satisfied that there are strong compassionate reasons justifying admission); (4) that exclusion is conducive to the public good (either on the personal direction of the Secretary of State or where it so seems from information available to the immigration officer, for example in the light of the character, conduct or associations of the person); or (5) where the person is outside the United Kingdom, failure by him to supply any information, documents, copy documents or medical report requested by the immigration officer or the Secretary of State: Immigration Rules para 321A (added by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 15).

26 The immigration officer must be satisfied that: (1) whether or not to the holder's knowledge, false representations were employed or material facts not disclosed for the purpose of obtaining the entry clearance; (ii) a change of circumstances (other than one relating to age) since issue has removed the basis of the holder's claim to admission; or (3) refusal is justified on grounds of restricted returnability, medical grounds, grounds of a criminal record, grounds relating to the existence of a deportation order, or because exclusion would be conducive to the public good: Immigration Rules para 321. See para 96 ante.

27 Immigration Rules para 10 (amended by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 3). An immigration officer may, however, suspend a person's leave to enter or remain without obtaining such authority: Immigration Rules para 10A (added by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 4).

UPDATE

136 General grounds for refusal of entry clearance or leave to enter

NOTE 6--It is for the individual officer to whom an application for entry clearance had been made to decide whether a valid national passport or other document satisfactorily establishes identity and nationality: *R (on the application of NA (Iraq)) v Secretary of State for Foreign and Commonwealth Affairs* [2007] EWCA Civ 759, [2007] All ER (D) 409 (Jul).

TEXT AND NOTES 12-24--Also, head (n) on his seeking to enter the United Kingdom, he fails to comply with a requirement relating to the provision of physical data to which he is subject by regulations made under the Nationality, Immigration and Asylum Act 2002 s 126: Immigration Rules para 320(20) (added by Statement of Changes in Immigration Rules (HC Paper (2003-04) no 370).

TEXT AND NOTES 16, 17--Heads (e), (f) deleted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 48. See now Immigration Rules para 320(7A), (7B), (7C), (11) (Immigration Rules para 320(7A), (7B) added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) paras 33, 35, 47; Immigration Rules para 320(7C), (11) added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) paras 38, 39; Immigration Rules para 320(7A) amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 97).

NOTE 18--Reference to spouse is now to spouse or civil partner: Immigration Rules para 320(13) (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 34).

TEXT AND NOTE 20--Reference to a work permit is now to an immigration employment document: Immigration Rules para 320(15) (amended by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 19).

NOTE 25--Immigration Rules para 321A amended: see PARA 96.

NOTE 26--Immigration Rules para 321 amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 98.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iv) Refusal of Entry Clearance; Refusal or Variation of Leave to Enter or Remain/137. Curtailment and variation of leave to enter or remain.

137. Curtailment and variation of leave to enter or remain.

Limited leave to enter or remain in the United Kingdom¹ may be varied by extending or restricting its duration, or by adding, varying or revoking conditions, or by removing the time limit (whereupon any conditions attached to the leave cease to apply)². The specific requirements for such a variation to be granted are set out in the Immigration Rules in relation to each category in which persons may be admitted to the United Kingdom³. However, there are also number of general grounds for curtailing or refusing a variation of leave.

A person's leave to enter or remain may be curtailed if:

- 384 (1) false representations have been made, or material information withheld, for the purpose of obtaining leave to enter or a previous variation of leave⁴;
- 385 (2) there has been a failure to comply with any conditions attached to the grant of leave to enter or remain⁵;
- 386 (3) the person concerned has failed to maintain and accommodate himself and any dependants without recourse to public funds⁶;
- 387 (4) it is undesirable to permit the person concerned to remain in the United Kingdom in the light of his character, conduct or associations, or because he represents a danger to national security⁷;
- 388 (5) the person ceases to meet the requirements of the Immigration Rules under which his leave to enter or remain was granted⁸; or
- 389 (6) the person is the dependant, or is seeking leave to remain as the dependant, of an asylum applicant whose claim has been refused and whose leave has been curtailed, and he does not qualify for leave to remain in his own right⁹.

An application for variation of leave to enter or remain must be refused if it is being sought for a purpose not covered by the Immigration Rules¹⁰, and will normally be refused if:

- 390 (a) false representations have been made, or material information withheld, for the purpose of obtaining leave to enter or a previous variation of leave¹¹;
- 391 (b) there has been a failure to comply with any conditions attached to the grant of leave to enter or remain¹²;
- 392 (c) the person concerned has failed to maintain and accommodate himself and any dependants without recourse to public funds¹³;
- 393 (d) it is undesirable to permit the person concerned to remain in the United Kingdom in the light of his character, conduct or associations, or because he represents a danger to national security¹⁴;
- 394 (e) a sponsor of the person concerned has refused to give on request a written undertaking to be responsible for his maintenance and accommodation in the United Kingdom, or has failed to honour an undertaking so given¹⁵;
- 395 (f) the person concerned has failed to honour any written or oral declaration or undertaking as to the intended duration and/or purpose of his stay¹⁶;
- 396 (g) the person concerned fails to satisfy the Secretary of State that he will be returnable to another country if allowed to remain in the United Kingdom for a further period¹⁷;

- 397 (h) the applicant has failed to produce, within a reasonable time, documents or other evidence required by the Secretary of State to establish his claim to remain under the Immigration Rules¹⁸;
- 398 (i) the applicant has failed, without reasonable explanation, to comply with a request made on behalf of the Secretary of State to attend for interview¹⁹;
- 399 (j) where the applicant is a child aged under 18 seeking a variation of leave to enter or remain otherwise than in conjunction with an application made by his parents or legal guardian, he fails to provide the Secretary of State, when required to do so, with written consent to the application from his parents or legal guardian²⁰; and
- 400 (k) where the applicant is a student who is sponsored by a government or international sponsorship agency, the sponsor has not given written consent to the proposed variation²¹.

An application to remain for any purpose for which an entry clearance is required must be refused unless the applicant was originally admitted with such an entry clearance²². There are exceptions, however, when the application to remain is made on the basis of cohabitation with²³ or marriage to²⁴ a person settled in the United Kingdom, on the grounds of ancestry²⁵, in order to remain in business under the provisions of a European Community Association Agreement²⁶, as a person exercising rights of access to a resident child²⁷, or for settlement as a child²⁸, adopted child²⁹, parent, grandparent or other dependent relative³⁰ of a person present and settled in the United Kingdom³¹.

A person arriving in the United Kingdom with leave to enter or remain which is in force and was given to him before his arrival may apply on arrival at a port for variation of leave, and an immigration officer acting on behalf of the Secretary of State may vary the leave, but is not obliged to consider the case, and if he declines to do so but does not cancel the leave, variation is to be sought at the Home Office³². After admission, any application for an extension of a time limit or variation of conditions must be made to the Home Office before the applicant's current leave expires³³.

With some exceptions³⁴, all applications for variation of leave to enter or remain must be made using the prescribed form, in the manner required and accompanied by the documents and photographs specified by the form, and an application made in any other way is not valid³⁵. An application in respect of employment for which a work permit or a permit for training or work experience is required, or in respect of the spouse or child of a person making such an application, should be made to the work permit department of the Home Office³⁶.

Where an application for variation of leave is made but before it is determined a second and inconsistent application is made, the Secretary of State is entitled to treat the first application as lapsed and superseded by the second³⁷.

The application is assessed in the light of the facts existing at the date of the Secretary of State's decision (the date of the notice of refusal), not at the date of the application³⁸.

When leave to enter is varied an entry is normally made in the applicant's passport or travel document (and, where appropriate, his registration certificate) but the decision may be notified to him in writing in some other appropriate way³⁹.

Where a person whose application for variation of leave is being considered requests the return of his passport for the purpose of travel outside the common travel area⁴⁰, the application is, unless it has by that time already been determined, treated as withdrawn as soon as the passport is returned in response to that request⁴¹.

Where a person has left the common travel area with leave to enter or remain which remains in force⁴², his leave, including any conditions, may be varied in such form or manner as permitted for the giving of leave to enter⁴³, but the Secretary of State is not obliged to consider an

application for a variation of leave to enter or remain from a person outside the United Kingdom⁴⁴.

Leave to enter or remain may be cancelled while the holder is outside the United Kingdom⁴⁵.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 See the Immigration Act 1971 s 3(3) (as amended); Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 31; and para 86 ante. Leave to remain and variations of leave to enter or remain are dealt with by the Secretary of State and his officers: see the Immigration Act 1971 s 4(1) (as amended); and para 86 ante. Leave to remain may be granted to persons in the United Kingdom without leave, such as former Commonwealth and Irish citizens who had the right of abode (see para 85 ante) or the benefit of movement in the common travel area (see para 94 ante) but have lost it by losing or renouncing their nationality; members of crews who have entered without leave and wish to remain in the United Kingdom (see para 87 ante); diplomats and others exempted from control under s 8(2), (3) (as amended), who are treated as having been given 90 days' leave to remain and wish to remain longer (see para 88 ante); and illegal entrants who require permission to stay (see para 151 post).

3 See para 99 et seq ante.

4 Immigration Rules paras 322(2), 323(i) (para 323 substituted by Statement of Changes in Immigration Rules (Cm 3365) (1996) para 7). A false representation does not necessarily connote fraud: *Akhtar v Immigration Appeal Tribunal* [1991] Imm AR 326, CA. However, where fraud is alleged the standard of proof is high: *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, [1983] 2 WLR 321, HL. 'Material' is not the same as 'decisive': *Sukhjinder Kaur v Secretary of State for the Home Department* [1998] Imm AR 1, CA. See para 96 ante.

5 Immigration Rules paras 322(3), 323(i) (as substituted: see note 4 supra). See note 12 infra.

6 Immigration Rules paras 322(4), 323(i) (as substituted: see note 4 supra). For the meaning of 'public funds' see para 99 note 8 ante. Maintenance of self and dependants without recourse to public funds is a general requirement applicable to all persons granted limited leave to enter or remain in the United Kingdom: see para 99 et seq ante.

7 Immigration Rules paras 322(5), 323(i) (as substituted: see note 4 supra).

8 Immigration Rules para 323(ii) (as substituted: see note 4 supra).

9 Immigration Rules para 323(iii) (as substituted: see note 4 supra).

10 Immigration Rules para 322(1). As to the purposes which are covered by the Immigration Rules see para 99 et seq ante. The United Kingdom is not prevented from refusing to extend leave to enter for a Moroccan national who was permitted to take up employment but whose original reason for being granted entry no longer exists, simply because a co-operation agreement exists between the European Community and Morocco: Case C-416/96 *El-Yassini v Secretary of State for the Home Department* [1999] All ER (EC) 193, ECJ. The Immigration Rules para 322(1) does not preclude the exercise of discretion to admit outside the Immigration Rules: see para 86 above.

11 Immigration Rules para 322(2). See note 4 supra.

12 Immigration Rules para 322(3). Only deliberate and persistent breaches of conditions justify the refusal of further leave: see the *Immigration Directorates' Instructions* Chapter 9 (General grounds for the refusal of entry clearance, leave to enter or variation of leave to enter or remain in the United Kingdom) Section 4 paragraph 4 (December 2000). The Secretary of State is not estopped from relying upon the breach of a condition committed during an earlier period of leave and upon which he did not seek to rely when extending that earlier leave: see *Secretary of State for the Home Department v Sidique* [1976] Imm AR 69; *Ofoajoku v Secretary of State for the Home Department* [1991] Imm AR 68, IAT; *Rajendran v Secretary of State for the Home Department* [1989] Imm AR 512, IAT (even if the breach comes to light only after the date of decision it can be relied upon by the Secretary of State in any appeal). As to the Secretary of State see para 2 ante.

13 Immigration Rules para 322(4). See note 6 supra.

14 Immigration Rules para 322(5).

15 Immigration Rules para 322(6). A sponsor of a person seeking variation of leave to enter or remain may be asked to give a written undertaking to be responsible for that person's accommodation and maintenance for the period of any leave granted, including any further variation, and any income support or asylum support paid

to meet that person's needs may be recovered from such a sponsor: see the Immigration Rules para 35; and para 93 ante.

16 Immigration Rules para 322(7). 'Undertaking' also includes an assurance or promise: *Amoah v Secretary of State for the Home Department* [1987] Imm AR 236, IAT. But where there is good reason for a change of intention, such as unforeseen circumstances, leave may be granted: see the *Immigration Directorates' Instructions* Chapter 9 (General grounds for the refusal of entry clearance, leave to enter or variation of leave to enter or remain in the United Kingdom) Section 4 paragraph 8 (December 2000).

17 Immigration Rules para 322(8). This provision does not apply in the case of a person eligible for settlement as the spouse of a person settled in the United Kingdom (see the Immigration Rules para 282; and para 122 ante); Immigration Rules para 322(8). Restrictions may be imposed on the length of stay of holders of restricted passports or travel documents: see para 93 ante.

18 Immigration Rules para 322(9); see also *R v Secretary of State for the Home Department, ex p Animashaun* [1990] Imm AR 70 (visitor enrolled on course as a student at a college which undertook to make his variation application but omitted to do so for over a year; Secretary of State properly took into account applicant's inertia for one year in not advising the Home Office of his change of plans and in not inquiring at the college).

19 Immigration Rules para 322(10).

20 Immigration Rules para 322(11). Written consent is not required in the case of unaccompanied minors seeking asylum: Immigration Rules para 322(11). See also para 136 note 22 ante.

21 Immigration Rules para 39A (added by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 329) para 3).

22 See para 96 ante.

23 See the Immigration Rules para 295D (as added); and para 123 ante.

24 See the Immigration Rules para 284 (as substituted); and para 122 ante.

25 See the Immigration Rules para 189; and para 112 ante.

26 See the Immigration Rules para 219 (as amended); and para 114 ante.

27 See the Immigration Rules para 248A (as added); and para 124 ante.

28 See the Immigration Rules paras 298 (as amended), 301 (as amended); and paras 125-126 ante.

29 See the Immigration Rules paras 311 (as amended), 314 (as amended); and paras 125-126 ante.

30 See the Immigration Rules para 317 (as amended); and paras 132-133 ante.

31 As to settlement after limited leave see para 134 ante.

32 Immigration Rules para 31A (added by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 10). As to the Home Office see para 1 ante.

33 Immigration Rules para 32. Where the application is made before the expiry of current leave, which expires before a decision has been taken on the application, the person's leave is to be treated as continuing until the end of the period allowed under the procedure rules made under the Immigration and Asylum Act 1999 Sch 4 para 3 for bringing an appeal (see para 173 post); Immigration Act 1971 s 3C (added by the Immigration and Asylum Act 1999 s 3).

34 The exceptions are: applications made at the port of entry under the Immigration Rules para 31A (as added); applications in respect of employment for which a work permit or a permit for training or work experience is required, or in respect of the spouse or child of a person who is making such an application under the Immigration Rules para 33 (as amended); applications made outside the United Kingdom under the Immigration Rules para 33A (as added) (see para 93 ante); applications made by EEA nationals under the Immigration Rules paras 255-257 (see para 237 post); and asylum applications (see para 238 et seq post): see the Immigration Rules para 32 (amended by Statement of Changes in Immigration Rules (HC Paper (1995-96) no 329) para 2).

35 Immigration Rules para 32 (as amended: see note 34 supra). The power to make such a rule was held to be within the Secretary of State's powers under the Immigration Act 1971 s 3(2) (see para 86 ante) in *R v*

Secretary of State for the Home Department, ex p Immigration Law Practitioners' Association [1997] Imm AR 189, QBD. See also *Sithole v Secretary of State for the Home Department* (9 August 2000, unreported), IAT (application made on wrong form held invalid). But minor non-compliance with the requirements of the form should not invalidate an application: *Derouiche v Secretary of State for the Home Department* [1998] INLR 286, IAT. Where the validity of an application is disputed, the questions are: (1) whether there has been substantial compliance with the requirements; (2) whether the non-compliance has been or can be waived; and (3) what are the consequences of non-compliance: *Ravichandran v Secretary of State for the Home Department* [2000] Imm AR 10, CA.

Note that provision has now been made in the Immigration Act 1971 so that where a form is prescribed for a particular kind of application under that Act the application must be made in that form: s 31A (added by the Immigration and Asylum Act 1999 s 165).

36 Immigration Rules para 33 (amended by Statement of Changes in Immigration Rules (Cm 5253) (2001) para 3).

37 *R v Immigration Appeal Tribunal, ex p Majid* [1988] Imm AR 315 (application for an extension as a visitor superseded by application for indefinite leave to remain as a spouse).

38 *Secretary of State for the Home Department v Patel* [1988] Imm AR 75, IAT; following *R v Immigration Appeal Tribunal, ex p Idrish* (1984) Times, 14 July, CA.

39 See the Immigration Act 1971 s 4(1) (as amended); the Immigration Rules para 31; and para 86 ante. See also *Rafiq v Secretary of State for the Home Department* [1998] Imm AR 193, [1998] 1 FCR 293 (in the light of the requirement of notice, a decision on a variation is not made until it is communicated). There is a presumption that the period of leave runs from the date inserted in the passport and any ambiguity in the notice granting leave is to be resolved in favour of the applicant: *Secretary of State for the Home Department v Behrooz* [1991] Imm AR 82, IAT.

40 As to the common travel area see para 94 ante.

41 Immigration Rules para 34 (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 7). Otherwise, the Home Office has no general power unilaterally to cancel an application for variation of leave: *Dungarwalla v Secretary of State for the Home Department* [1989] Imm AR 476, IAT (although the appellants did not in fact leave the common travel area, their applications were held to have been cancelled because they had been so treated by the acquiescence of the appellants and their representatives).

42 Ie under the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 13: see para 86 ante.

43 The Immigration Act 1971 s 3B (as added) (see para 86 ante) allows the Secretary of State by order to make provision for changes in the form or manner in which leave to remain may be given, refused or varied. No such changes have been made in respect of leave to remain or variation of leave to enter or remain, although for changes in respect of leave to enter see the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, arts 7-11; and para 86 ante.

44 Immigration Rules para 33A (added by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 12).

45 Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 13(7). As to the determination of whether or not to cancel leave see art 13(8), (9); and para 86 ante.

UPDATE

137 Curtailment and variation of leave to enter or remain

TEXT AND NOTES--As to the curtailment of leave or alteration of duration of leave in relation to a Tier 2 Migrant, a Tier 5 Migrant or a Tier 5 Migrant see Immigration Rules para 323A (added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 100; and amended by Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) paras 102-105).

As to the Secretary of State's power to revoke a person's indefinite leave to enter or remain in the United Kingdom, see the Nationality, Immigration and Asylum Act 2002 s 76; and PARA 86. The *ex turpi causa* principle applied, if at all, only tenuously in relation

to immigration control; such controls as public policy required were contained in the Immigration Rules themselves: *Sonmez v Secretary of State for the Home Department* [2009] EWCA Civ 582, [2010] 1 CMLR 186, [2009] All ER (D) 184 (Jun).

TEXT AND NOTES 4-9--Or, head (7) on any of the grounds set out in the Immigration Rules paras 339A (i)-(vi), 339G(i)-(vi): Immigration Rules para 323(iv) (added by Statement of Changes in Immigration Rules (Cm 6918) (2006) para 1).

TEXT AND NOTE 10--Immigration Rules para 322 amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 38. An application must also be refused where false representations have been made or false documents or information submitted, or material facts have not been disclosed: see Immigration Rules para 322(1A) (added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 39; and amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) para 99).

NOTE 17--Reference to spouse is now to spouse or civil partner: Immigration Rules para 322(8) (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 34).

TEXT AND NOTE 18--For 'documents or other evidence' read 'information, documents or other evidence': Immigration Rules para 322(9) (substituted by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 104) para 12).

NOTE 33--1971 Act s 3C amended: Immigration, Asylum and Nationality Act 2006 s 11(1)-(4). See further 1971 Act s 3D (added by 2006 Act s 11(5)) (continuation of leave following revocation). See also s 47 (removal: persons with statutorily extended leave).

TEXT AND NOTES 35, 36--Immigration Rules paras 32, 33 deleted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 2.

TEXT AND NOTES 40, 41--Immigration Rules para 34 replaced by Immigration Rules paras 34-34J (substituted by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 321) para 3) (specified forms and procedures for applications or claims in connection with immigration, variation of applications or claims for leave to remain, determination of date of an application or claim (or variation of an application or claim) in connection with immigration, withdrawn applications or claims for leave to remain in United Kingdom). Immigration Rules paras 34, 34A, 34B, 34G amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 1113) paras 4-20. Immigration Rules para 34B amended: Statement of Changes in Immigration Rules (HC Paper (2008-09) no 314) paras 4-6.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iv) Refusal of Entry Clearance; Refusal or Variation of Leave to Enter or Remain/138. Variation of leave for crew members.

138. Variation of leave for crew members.

A person who has been granted leave to enter¹ the United Kingdom² to join a ship, aircraft, hovercraft, hydrofoil or international train service as a crew member, or a crew member granted leave to enter for hospital treatment, repatriation or transfer to another ship, aircraft, hovercraft, hydrofoil or international train service in the United Kingdom, must be refused leave to remain unless an extension of stay is necessary to fulfil the purpose for which he was

granted leave to enter or he qualifies for an extension on the basis of marriage to a person settled in the United Kingdom³.

1 As to leave to enter see para 86 ante.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 324. As to extensions of stay on the basis of marriage to a person settled in the United Kingdom see paras 121-122 ante.

UPDATE

138 Variation of leave for crew members

TEXT AND NOTE 3--Now refers to marriage or civil partnership: Immigration Rules para 324 (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 34).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(1) CONTROL OF ADMISSION TO THE UNITED KINGDOM/(iv) Refusal of Entry Clearance; Refusal or Variation of Leave to Enter or Remain/139. Holders of restricted travel documents and passports.

139. Holders of restricted travel documents and passports.

The holder of a passport or travel document which is endorsed with a restriction on the period for which he may remain outside his country of normal residence may not have his stay in the United Kingdom¹ extended beyond the period of his authorised absence². If a person's permission to enter another country is limited, his stay in the United Kingdom must not be extended to less than two months from the expiry of that permission³. The holder of a Home Office travel document must not be given leave to remain for a period beyond the validity of the document⁴.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 22. The restrictions set out in the Immigration Rules paras 21-23 do not apply to a person who is eligible for admission for settlement, to a spouse who is eligible for admission under the Immigration Rules para 282 (see para 122 ante), or to a person who qualifies for removal of the time limit on his stay: Immigration Rules para 23. As to the general requirements for entry see para 93 ante. As to passports and travel documents see para 78 ante.

3 Immigration Rules para 21. See note 2 supra.

4 Immigration Rules para 23. See note 2 supra. As to the Home Office see para 1 ante.

UPDATE

139 Holders of restricted travel documents and passports

TEXT AND NOTES--A person who is not a visa national, a specified national (see PARA 96) or who is seeking entry for a purpose for which prior entry clearance is not required may ascertain in advance whether he is eligible for admission by applying for entry

clearance in accordance with the Immigration Rules paras 24-30 (see PARA 96): Immigration Rules para 23A (added by Statement of Changes in Immigration Rules (HC Paper (2002-03) no 1224) para 2).

NOTE 2--Now refers to spouse or civil partner (see PARA 121): Immigration Rules para 23 (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 2).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(i) In general/140. Introduction.

(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC

(i) In general

140. Introduction.

The power to give or refuse leave to enter the United Kingdom¹ is exercised by immigration officers² but the power to give leave to remain in the United Kingdom or to vary (whether as regards duration or conditions) any leave to enter or remain³ is exercised by the Secretary of State⁴. These powers, unless otherwise allowed by order made by statutory instrument⁵ in respect of any class of persons, must be exercised by notice in writing given to the person affected⁶.

Immigration officers are appointed by the Secretary of State⁷ and in the exercise of their functions they must act in accordance with his instructions, provided that those instructions are not inconsistent with the Immigration Rules⁸.

Immigration officers, entry clearance officers and all staff of the Home Office Immigration and Nationality Directorate must carry out their duties without regard to the race, colour or religion of those seeking to enter or remain in the United Kingdom and in compliance with the provisions of the Human Rights Act 1998⁹. It is unlawful for the Secretary of State, immigration officers, constables and medical inspectors to racially discriminate against any person when carrying out their functions¹⁰. However, it is not unlawful for a Minister of the Crown, acting personally, or any other person acting in accordance with either a requirement imposed or express instruction given by such a minister acting personally, with respect to a particular case or class of case or certain enactments¹¹ or regulations made under or by virtue of any of those enactments with respect to a particular class of case, to discriminate against another person on grounds of nationality or ethnic or national origins in carrying out immigration and nationality functions¹². It is unlawful for the Secretary of State, immigration officers, constables and medical inspectors to act in a way which is incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)¹³.

An immigration officer exercising any power conferred on him by the Immigration Act 1971 or the Immigration and Asylum Act 1999 may, if necessary, use reasonable force¹⁴.

The powers of immigration officers to carry out frontier controls¹⁵ are extended to control zones in France and Belgium for the purpose of enabling those officers to carry out their functions in respect of persons travelling to the United Kingdom through the Channel Tunnel¹⁶.

As from a day to be appointed¹⁷, the Director of Public Prosecutions is empowered to take over the conduct of any criminal proceedings instituted by an immigration officer acting in his capacity as such¹⁸.

1 As to the requirement for leave see para 86 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 However, the Secretary of State may grant or refuse leave to enter to a person who has claimed asylum, or made a human rights allegation or has sought leave to enter outside the Immigration Rules: Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 2(1)-(3). As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).

3 le pursuant to the Immigration Act 1971 s 3(3)(a): see para 86 ante. As to the continuation of leave pending a decision see also s 3C (as added); and para 148 post.

4 As to the Secretary of State see para 2 ante.

5 See the Immigration (Variation of Leave) Order 1976, SI 1976/1572 (as amended); the Immigration (Revocation of Employment Restrictions) Order 1972, SI 1972/1647; and para 86 notes 4, 15 ante. For exceptions to the requirement to give notice in writing see the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161; and para 148 post.

6 Immigration Act 1971 s 4(1) (amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 45). There is no statutory provision for a police officer to have notional or implied authority to grant leave to enter: *R v Secretary of State for the Home Department, ex p Mohan* [1989] Imm AR 436 (Sri Lankan allowed to proceed into the United Kingdom by a police officer at Fishguard did not have leave to enter and was, accordingly, an illegal entrant). In deciding whether to allow entry, an immigration officer need only consider factors known to him at the time, provided that he acts fairly and reasonably: *R v Chief Immigration Officer, Heathrow, ex p Shaikh* (1976) 120 Sol Jo 605, CA. As to proof of legality of entry see *R v Secretary of State for Home Affairs, ex p Badaiki* (1977) 121 Sol Jo 443; *R v Secretary of State for Home Affairs, ex p Hussain* [1978] 2 All ER 423, [1978] 1 WLR 700, CA; *R v Secretary of State for the Home Department, ex p Choudhary* [1978] 3 All ER 790, [1978] 1 WLR 1177, CA. The requirement of written notice has been modified by the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 8: see paras 86 note 15 ante, 148 post.

7 Immigration Act 1971 s 4(2), Sch 2 para 1(1). An immigration officer appointed under this provision is eligible for appointment as an examining officer under the Terrorism Act 2000 s 53, Sch 7 para 1(1)(b): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 430. Immigration officers are civil servants within the Home Office, not the holders of a statutory office, and the Secretary of State is entitled to delegate to immigration officers the exercise of statutory powers on his behalf under the Immigration Act 1971 in the absence of express or implicit limits in the Act itself: *R v Secretary of State for the Home Department, ex p Oladehinde and Alexander* [1991] 1 AC 254, [1990] 3 All ER 393, [1991] Imm AR 111, HL (delegation of deportation decisions to immigration inspectors held legitimate).

8 Immigration Act 1971 Sch 2 para 1(3). Nothing in the Police and Criminal Evidence Act 1984 Pt IV (ss 34-51) (as amended) (conditions and duration of detention: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 938 et seq) affects the powers of immigration officers under the Immigration Act 1971 s 4 and Sch 2: Police and Criminal Evidence Act 1984 s 51(a).

9 Immigration Rules para 2 (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 1).

10 See the Race Relations Act 1976 s 19B (added by the Race Relations (Amendment) Act 2000 s 1); and DISCRIMINATION vol 13 (2007 Reissue) para 470. Where a person alleges that the Secretary of State, an immigration officer or a person responsible for the grant or refusal of entry clearance has racially discriminated against him, he may appeal against that decision (unless he has grounds for bringing an appeal against the decision under the Special Immigration Appeals Commission Act 1997: see para 173 et seq post): see the Immigration and Asylum Act 1999 s 65 (as amended); and para 179 post.

11 Race Relations Act 1976 s 19D(1)-(3) (s 19D added by the Race Relations (Amendment) Act 2000 s 1). The enactments referred to are: (1) the Immigration Acts (see para 83 ante) but excluding the Immigration Act 1971 ss 28A-28K (all as added) so far as they relate to offences under Pt III (ss 24-28L) (as amended) (see para 197 et seq post); (2) the British Nationality Act 1981; (3) the British Nationality (Falkland Islands) Act 1983; (4) the British Nationality (Hong Kong) Act 1990; (5) the Hong Kong (War Wives and Widows) Act 1996; (6) the Special Immigration Appeals Commission Act 1997; and (7) any provision made under the European Communities Act 1972 or any provision of Community law which relates to the subject-matter of any of the

enactments in heads (1)-(6) supra: see the Race Relations Act 1976 s 19D(5) (as so added). See also the *Immigration Directorates' Instructions* Chapter 1 (General provisions) Section 11 Annex EE (March 2001).

12 Race Relations Act 1976 s 19D (as added: see note 11 supra). The Race Relations Act 1976 applies to an immigration officer carrying out functions in a control zone or supplementary control zone outside the United Kingdom as it applies to the carrying out of those functions within the United Kingdom: Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 4(1C) (added by SI 2001/3707); Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 4(1). For the meaning of 'control zone' see para 93 note 5 ante. The Secretary of State must appoint a person who is not a member of his staff to act as a race monitor: Race Relations Act 1976 s 19E(1) (s 19E added by the Race Relations (Amendment) Act 2000 s 1). Before appointing any such person, the Secretary of State must consult the Commission for Racial Equality: Race Relations Act 1976 s 19E(2) (as so added). As to the race monitor's functions see s 19E(3) (as added); and para 86 note 23 ante. The race monitor must make an annual report on the discharge of his functions to the Secretary of State (s 19E(4) (as so added)), who must lay a copy of any such report made to him before each House of Parliament (s 19E(5) (as so added)). The Secretary of State must pay to the race monitor such fees and allowances, if any, as he may determine: s 19E(6) (as so added). As to the Commission for Racial Equality see DISCRIMINATION vol 13 (2007 Reissue) para 488 et seq. For the Race Relations (Immigration and Asylum) Authorisation 2001 see the *Immigration Directorates' Instructions* Chapter 1 (General provisions) Section 11 Annex EE (March 2001).

13 Ie the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969): see the Human Rights Act 1998 s 6; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 122 et seq. As to the derogation of the United Kingdom government from the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 5(1) in relation to suspected international terrorists see para 167 post. Where a person alleges that the Secretary of State, an immigration officer or a person responsible for the grant or refusal of entry clearance has made a decision in breach of his human rights, he may appeal against that decision (unless he has grounds for bringing an appeal against the decision under the Special Immigration Appeals Commission Act 1997: see para 173 et seq post): see the Immigration and Asylum Act 1999 s 65; and para 179 post.

14 Ibid s 146(1).

15 For the meaning of 'frontier controls' see para 196 note 3 post.

16 See the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 4 (amended by SI 1996/2283; SI 2001/1544; SI 2001/3707), and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 4. In addition to the general application of United Kingdom legislation effected by these provisions, specific modifications are made in respect of certain enactments (in particular provisions of the Immigration Act 1971), which are recorded in the appropriate places in this work.

17 Ie under the Immigration and Asylum Act 1999 s 170(4). At the date at which this volume states the law no such day had been appointed.

18 See the Prosecution of Offences Act 1985 s 3(2)(aa) (prospectively added by the Immigration and Asylum Act 1999 s 164); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1080. As to the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1066, 1079 et seq.

UPDATE

140 Introduction

TEXT AND NOTES--As to the power of arrest of immigration officers in relation to specified offences see PARA 140A; as to the Border and Immigration Inspectorate see PARA 140B; and as to the customs functions of the Secretary of State, the Director of Border Revenue, and immigration officers see PARA 140C.

An immigration officer may arrest a person without a warrant where, in the course of exercising a function under the Immigration Acts (see PARA 83), he forms a reasonable suspicion that a person has committed or attempted to commit specified offences (see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 14(2) (amended by Fraud Act 2006 Sch 1 para 35, Sch 3)): 2004 Act s 14(1).

Where a document comes into the possession of the Secretary of State or an immigration officer in the course of the exercise of an immigration function, the

Secretary of State or an immigration officer may retain the document while he suspects that a person to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and retention of the document may facilitate the removal: s 17.

The Secretary of State must make arrangements for ensuring that specified functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of such functions are provided having regard to that need: Borders, Citizenship and Immigration Act 2009 s 55(1). 'Children' means persons who are under the age of 18: s 55(6). The functions so specified are as follows: (1) any function of the Secretary of State in relation to immigration, asylum or nationality; (2) any function conferred by or by virtue of the Immigration Acts on an immigration officer; (3) any general customs function of the Secretary of State; and (4) any customs function conferred on a designated customs official: s 55(2). 'Customs function', 'designated customs official', and 'general customs function' have the meanings given by the 2009 Act Pt 1 (ss 1-38) (PARAS 140C.1, C.3): s 55(6). A person exercising any of those functions must, in doing so, have regard to any guidance given to him by the Secretary of State for this purpose: s 55(3). The Director of Border Revenue ('the Director') (see PARA 140C.2) must also make arrangements for ensuring that his functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and any services provided by another person pursuant to arrangements made by the Director in the discharge of such a function are provided having regard to that need: s 55(4). A person exercising functions of the Director must, in doing so, have regard to any guidance given to him by the Secretary of State for this purpose: s 55(5). A reference in an enactment (other than the 2009 Act) to the Immigration Acts includes a reference to the 2009 Act s 55: s 55(7).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 7--Immigration officers have no immunity from a claim for damages for false imprisonment if a claimant's detention is found to be unlawful: *D v Home Office* [2005] EWCA Civ 38, [2006] 1 All ER 183.

TEXT AND NOTE 12--Now refers to immigration functions: Race Relations Act 1976 s 19D(1) (amended by Nationality, Immigration and Asylum Act 2002 s 6(2)).

NOTE 12--1976 Act s 19E repealed: UK Borders Act 2007 s 54(a), Schedule. Race monitor replaced by Border and Immigration Inspectorate: see PARA 140B..

TEXT AND NOTE 17--Day now appointed: SI 2004/2997.

TEXT AND NOTE 18--The Director is also empowered to give, to such extent as he considers appropriate, advice to immigration officers on matters relating to criminal offences: Prosecution of Offences Act 1985 s 3(2)(ec) (added by Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 7).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(i) In general/140A. Power of arrest.

140A. Power of arrest.

Where an immigration officer in the course of exercising a function under the Immigration Acts¹ forms a reasonable suspicion that a person has committed or attempted to commit certain offences², he may arrest the person without warrant³.

1 As to the Immigration Acts see PARA 83.

2 le (1) the offence of conspiracy at common law (in relation to conspiracy to defraud) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 73); (2) an offence under the Offences Against the Person Act 1861 s 57 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 828); (3) an offence under the Perjury Act 1911 s 3 (see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 533) or 4 (see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 534), and s 7 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 720, 721) if it relates to an offence under s 3 or 4; (4) an offence under any of the Theft Act 1968 s 1, 17, 22; (5) an offence under any of the Forgery and Counterfeiting Act 1981 ss 1-4, 5(1), (3) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 347-351); (7) an offence under the Sexual Offences Act 2003 ss 57-59 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 228); (8) an offence under the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 4 (see PARA 199A); and (9) an offence under the Identity Cards Act 2006 s 25 (see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 527A); 2004 Act s 14(2) (amended by Identity Cards Act 2006 s 30(3), Sch 2).

3 2004 Act s 14(1).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(i) In general/140B. Border and Immigration Inspectorate.

140B. Border and Immigration Inspectorate.

1. Establishment

The Secretary of State must appoint a person as Chief Inspector of the UK Border Agency¹. The Chief Inspector must monitor and report on the efficiency and effectiveness of the performance of functions by the following: (1) designated customs officials and officials of the Secretary of State exercising customs functions²; (2) immigration officers and officials of the Secretary of State exercising functions relating to immigration, asylum or nationality; (3) the Secretary of State in so far as the Secretary of State has general customs functions³; (4) the Secretary of State in so far as the Secretary of State has functions relating to immigration, asylum or nationality; (5) the Director of Border Revenue ('the Director')⁴ and any person exercising functions of the Director⁵. The Chief Inspector must also monitor and report on the efficiency and effectiveness of the services provided by a person acting pursuant to arrangements relating to the discharge of such functions⁶.

In particular, the Chief Inspector must consider and make recommendations about (1) consistency of approach among the persons listed above; (2) the practice and performance of those persons compared to other persons doing similar things; (3) practice and procedure in making decisions; (4) the treatment of claimants and applicants; (5) certification⁷; (6) compliance with law about discrimination in the exercise of functions⁸; (7) practice and procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure); (8) practice and procedure in relation to the prevention, detection and investigation of offences; (9) practice and procedure in relation to the conduct of criminal proceedings; (10) whether customs functions have been appropriately exercised by the Secretary of State and the Director; (11) the provision of information; (12) the handling of complaints; and (13) the content of information about conditions in countries outside the United Kingdom which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials⁹. The Chief Inspector must not aim to investigate individual cases (although this provision does not prevent

the Chief Inspector from considering or drawing conclusions about an individual case for the purpose of, or in the context of, considering a general issue)¹⁰.

- 1 UK Borders Act 2007 s 48(1) (amended by Borders, Citizenship and Immigration Act 2009 s 28(1)).
- 2 'Designated customs official' and 'customs function' have the meanings given by Borders, Citizenship and Immigration Act 2009 Pt 1 (ss 1-38) (see PARAS 140C.1, C.3): UK Borders Act 2007 s 48(3A) (added by Borders, Citizenship and Immigration Act 2009 s 28(6)).
- 3 'General customs function' has the meaning given by Borders, Citizenship and Immigration Act 2009 Pt 1 (ss 1-38) (see PARA 140C.1): UK Borders Act 2007 s 48(3A) (added by Borders, Citizenship and Immigration Act 2009 s 28(6)).
- 4 As to the Director of Border Revenue see PARA 140C.2.
- 5 2007 Act s 48(1A) (added by Borders, Citizenship and Immigration Act 2009 s 28(2)).
- 6 2007 Act s 48(1B) (added by Borders, Citizenship and Immigration Act 2009 s 28(2)).
- 7 Ie certification under Nationality, Immigration and Asylum Act 2002 s 94: see PARA 173B.
- 8 Ie including reliance on Race Relations Act 1976 s 19D: see PARA 140.
- 9 2007 Act s 48(2) (amended by Borders, Citizenship and Immigration Act 2009 s 28(3)). Unless directed to do so by the Secretary of State, the Chief Inspector must not monitor and report on the exercise by the listed persons of (1) functions at removal centres and short-term holding facilities, and under escort arrangements, in so far as Her Majesty's Chief Inspector of Prisons has functions under Prison Act 1952 s 5A in relation to such functions; and (2) functions at detention facilities, in so far as Her Majesty's Inspectors of Constabulary have functions by virtue of Borders, Citizenship and Immigration Act 2009 s 29 (see POLICE vol 36(1) (2007 Reissue) PARA 206) in relation to such functions: 2007 Act s 48(2A) (added by Borders, Citizenship and Immigration Act 2009 s 28(4)).
- 10 2007 Act s 48(4).

2. Chief Inspector: supplemental

The Secretary of State must pay remuneration and allowances to the Chief Inspector¹. The Secretary of State (1) must before the beginning of each financial year specify a maximum sum which the Chief Inspector may spend on functions for that year, (2) may permit that to be exceeded for a specified purpose, and (3) must defray the Chief Inspector's expenditure for each financial year subject to heads (1) and (2) above². The Chief Inspector must hold and vacate office in accordance with terms of appointment (which may include provision about retirement, resignation or dismissal)³, and he may appoint staff⁴. A person who is employed by or in any of the following may not be appointed as Chief Inspector: (a) a government department, (b) the Scottish Administration, (c) the National Assembly for Wales, and (d) a department in Northern Ireland⁵.

- 1 UK Borders Act 2007 s 49(1).
- 2 Ibid s 49(2).
- 3 Ibid s 49(3).
- 4 Ibid s 49(4).
- 5 Ibid s 49(5).

3. Reports

The Chief Inspector must report in writing to the Secretary of State (1) once each calendar year, in relation to the performance of his functions¹ generally, and (2) at other times as requested by the Secretary of State in relation to specified matters². The Secretary of State must lay before Parliament a copy of any report received under the above provision³. But a copy may omit material if the Secretary of State thinks that its publication (a) is undesirable for reasons of national security, or (b) might jeopardise an individual's safety⁴.

1 le the functions under the UK Borders Act 2007 s 48: see PARA 140B.1.

2 Ibid s 50(1).

3 le under ibid s 50(1): s 50(2).

4 Ibid s 50(3).

4. Plans

The Chief Inspector must prepare plans describing the objectives and terms of reference of proposed inspections¹. Plans must be prepared (1) at prescribed² times and in respect of prescribed periods, and (2) at such other times, and in respect of such other periods, as the Chief Inspector thinks appropriate³. A plan must (a) be in the prescribed form, and (b) contain the prescribed information⁴. In preparing a plan the Chief Inspector must consult (i) the Secretary of State, and (ii) prescribed persons⁵. As soon as is reasonably practicable after preparing a plan the Chief Inspector must send a copy to (A) the Secretary of State, and (B) each prescribed person⁶. The Chief Inspector and a prescribed person may by agreement disapply a requirement (aa) to consult the person, or (bb) to send a copy of a plan to the person⁷. Nothing in the above provisions prevents the Chief Inspector from doing anything not mentioned in a plan⁸.

1 UK Borders Act 2007 s 51(1).

2 'Prescribed' means prescribed by order of the Secretary of State: ibid s 55(1). An order (1) may make provision generally or only for specified purposes, (2) may make different provision for different purposes, and (3) may include incidental or transitional provision: s 55(2). An order prescribing a person may specify (a) one or more persons, or (b) a class of person: s 55(3). An order (i) must be made by statutory instrument, and (ii) is subject to annulment in pursuance of a resolution of either House of Parliament: s 55(4).

3 Ibid s 51(2).

4 Ibid s 51(3).

5 Ibid s 51(4).

6 Ibid s 51(5).

7 Ibid s 51(6).

8 Ibid s 51(7).

5. Relationship with other bodies: general

The Chief Inspector must co-operate with prescribed¹ persons in so far as he thinks it consistent with the efficient and effective performance of his functions². He may act jointly with prescribed persons where he thinks it in the interests of the efficient and effective performance of his functions³, and he may assist a prescribed person⁴.

1 For the meaning of 'prescribed' see PARA 140B.4.

2 le the functions under the UK Borders Act 2007 s 48 (see PARA 140B.1): s 52(1).

3 Ibid s 52(2).

4 Ibid s 52(3). The Chief Inspector may delegate a specified aspect of his functions to a prescribed person: s 52(4).

6. Relationship with other bodies: non-interference notices

If the Chief Inspector believes that (1) a prescribed¹ person proposes to inspect any aspect of the work of a listed person², and (2) the inspection may impose an unreasonable burden on such a person, the Chief Inspector may give the prescribed person a notice prohibiting a specified inspection³. The prescribed person must comply with the notice, unless the Secretary of State cancels it on the grounds that the inspection would not impose an unreasonable burden on the listed person⁴. A notice must (a) be in the prescribed form, and (b) contain the prescribed information⁵. The Secretary of State may by order make provision about (i) the timing of notices; (ii) the publication of notices; and (iii) the revision or withdrawal of notices⁶.

1 For the meaning of 'prescribed' see PARA 140B.4.

2 le a person listed in UK Borders Act 2007 s 48(1A) or (1B) (see PARA 140B.1).

3 2007 Act s 53(1), (2) (amended by Borders, Citizenship and Immigration Act 2009 s 28(7)).

4 2007 Act s 53(3) (amended by Borders, Citizenship and Immigration Act 2009 s 28(8)).

5 2007 Act s 53(4).

6 Ibid s 53(5).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(i) In general/140C. Customs functions of the Secretary of State, immigration officers, etc.

140C. Customs functions of the Secretary of State, immigration officers, etc.

1. The Secretary of State

The functions of the Commissioners for Her Majesty's Revenue and Customs that are exercisable in relation to general customs matters¹ are exercisable by the Secretary of State concurrently with the Commissioners². If a function is exercisable by the Commissioners in relation to a general customs matter and in relation to any other matter, the function is exercisable by the Secretary of State in relation to the general customs matter only³.

The Secretary of State by whom general customs functions⁴ are exercisable may designate an immigration officer or any other official in his department as a general customs official⁵. A general customs official has, in relation to a general customs matter, the same functions as an officer of the Revenue would have, and may exercise the functions conferred on the Secretary of State by the above provisions⁶. This does not prevent the exercise of the Secretary of State's functions by any other official of the Secretary of State⁷. A designation is (1) subject to any limitations specified in it; (2) may in particular relate to (a) the functions which are exercisable by virtue of the designation; or (b) the purposes for which those functions are exercisable; and (3) may be (a) permanent or for a specified period; (b) withdrawn; and (c) varied⁸.

A general customs official must comply with the directions of the Secretary of State in the exercise of general customs functions⁹.

1 A 'general customs matter' is a matter in relation to which the Commissioners, or officers of Revenue and Customs, have functions, other than (1) a matter listed in Commissioners for Revenue and Customs Act 2005 Sch 1; (2) any tax, duty or levy not mentioned in the 2005 Act Sch 1; (3) a matter in respect of which functions were transferred to the Commissioners from the Paymaster General under the Transfer of Functions (Office of Her Majesty's Paymaster General) Order 2006, SI 2006/607 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 714); (4) the subject matter of European Parliament and EC Council Directive 2005/60 (OJ L309, 25.11.2005, p 15) on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing; and (5) the subject matter of European Parliament and EC Council Regulation 1781/2006 (OJ L345, 8.12.2006, p 1) on information on the payer accompanying transfers of funds: Borders, Citizenship and Immigration Act 2009 s 1(2). The Secretary of State may by order modify the functions specified above: see Borders, Citizenship and Immigration Act 2009 s 2.

2 Borders, Citizenship and Immigration Act 2009 s 1(1). Section 1 applies to an enactment passed or made before the end of the session in which the 2009 Act was passed and an instrument or document issued before the passing of the 2009 Act: Borders, Citizenship and Immigration Act 2009 s 1(6). The application of s 1 includes Commissioners for Revenue and Customs Act 2005 ss 5(2)(b), 9, 25A(2), 31, 33 (other than the application of s 33 to an offence under 2005 Act s 30) but does not include any other enactment contained in the 2005 Act: Borders, Citizenship and Immigration Act 2009 s 1(7).

3 Borders, Citizenship and Immigration Act 2009 s 1(3).

4 'General customs function' means (a) a function that is exercisable (i) by the Secretary of State by virtue of Borders, Citizenship and Immigration Act 2009 s 1; or (ii) by general customs officials by virtue of 2009 Act s 3; (b) a function that is conferred on general customs officials or the Secretary of State by or by virtue of the 2009 Act ss 22, 23; or (c) a function under Community law that is exercisable by the Secretary of State or general customs officials in relation to a matter (i) in relation to which functions under Community law are exercisable by the Commissioners or officers of Revenue and Customs; and (ii) that is not listed in NOTE 1 heads (1)-(5): Borders, Citizenship and Immigration Act 2009 s 1(8).

5 Borders, Citizenship and Immigration Act 2009 s 3(1). Section 3 applies to an enactment passed or made, or an instrument or document issued, before the 2009 Act is passed, and subject to express provision to the contrary, an enactment passed or made, or an instrument or document issued, after the 2009 Act is passed: Borders, Citizenship and Immigration Act 2009 s 3(7). This includes Commissioners for Revenue and Customs Act 2005 ss 2(4), 6, 25(1), (5), 25A(1), 31-33 (other than the application of s 33 to an offence under the 2005 Act s 30) but does not otherwise include any enactment contained in the 2005 Act: Borders, Citizenship and Immigration Act 2009 s 3(8). Section 3 has effect subject to any limitation specified in the general customs official's designation under the 2009 Act s 4 and any designation of the official under the 2009 Act s 11 (PARA 140C.2): Borders, Citizenship and Immigration Act 2009 s 3(9). Specified provisions of the Police and Criminal Evidence Act 1984 apply to criminal investigations conducted by designated customs officials in relation to a general customs or customs revenue matter (for the meaning of 'customs revenue matter' see PARA 140C.2), and to persons detained by such officials: see Borders, Citizenship and Immigration Act 2009 s 22; and CUSTOMS AND EXCISE VOL 12(3) (2007 Reissue) PARA 1154. The Secretary of State may by order provide for the application of provisions of the 1984 Act to criminal investigations conducted by designated customs officials or immigration officers, or to persons detained by such officials or officers as part of a criminal investigation: see Borders, Citizenship and Immigration Act 2009 s 23.

6 Borders, Citizenship and Immigration Act 2009 s 3(2). If a function within s 3(2) is exercisable in relation to a general customs matter and in relation to any other matter, the function is exercisable by a general customs official in relation to the general customs matter only: s 3(4).

7 Borders, Citizenship and Immigration Act 2009 s 3(3).

8 Borders, Citizenship and Immigration Act 2009 s 4(1)-(3). The power to designate, or to withdraw or vary a designation, is exercised by the Secretary of State giving notice to the official in question: s 4(4). The Secretary of State may designate an official only if he is satisfied that the official (A) is capable of effectively carrying out the functions that are exercisable by virtue of the designation; (B) has received adequate training in respect of the exercise of those functions; and (C) is otherwise a suitable person to exercise those functions: s 4(5).

9 Borders, Citizenship and Immigration Act 2009 s 5.

2. The Director of Border Revenue and customs revenue officials

The Secretary of State must designate an official in his department by whom general customs functions¹ are exercisable as the Director of Border Revenue ('the Director')². Before making such a designation, the Secretary of State must obtain the consent of the Treasury³.

The functions of the Commissioners for Her Majesty's Revenue and Customs that are exercisable in relation to customs revenue matters⁴ are exercisable by the Director concurrently with the Commissioners⁵. If a function is exercisable by the Commissioners in relation to a customs revenue matter, and in relation to any other matter, the function is exercisable by the Director in relation to the customs revenue matter only⁶. The Treasury may by order modify the Director's functions⁷, and the Director may make arrangements to delegate those functions⁸. The Director and a person to whom he delegates his functions must comply with directions given by the Treasury⁹.

The Director may designate an immigration officer or any other official in his department by whom general customs functions are exercisable as a customs revenue official¹⁰. A customs revenue official has, in relation to a customs revenue matter, the same functions as an officer of Revenue and Customs would have, and may exercise the customs revenue functions¹¹ conferred on the Director¹². If such a function is exercisable in relation to a customs revenue matter and in relation to any other matter, the function is exercisable by a customs revenue official in relation to the customs revenue matter only¹³. A designation is subject to such limitations as may be specified in it¹⁴. A customs revenue official must comply with the directions of the Director in the exercise of customs revenue functions¹⁵.

1 For the meaning of 'general customs function' see PARA 140C.1.

2 Borders, Citizenship and Immigration Act 2009 s 6(1).

3 Borders, Citizenship and Immigration Act 2009 s 6(2).

4 For these purposes, each of the following is a 'customs revenue matter': (1) agricultural levies (within the meaning given by European Communities Act 1972 s 6(8)); (2) anti-dumping duty (within the meaning of EC Council Regulation 384/96 (OJ L56, 6.3.96, p 1) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 348 et seq)); (3) countervailing duty (within the meaning of EC Council Regulation 2026/97 (OJ L288, 21.10.97, p 1) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 367 et seq)); (4) customs duties; (5) duties of excise other than (a) amusement machine licence duty; (b) bingo duty; (c) gaming duty; (d) general betting duty; (e) lottery duty; (f) pool betting duty; and (g) remote gaming duty; and (6) value added tax so far as relating to the export of goods from, or the import of goods into, the United Kingdom: Borders, Citizenship and Immigration Act 2009 s 7(2).

5 Borders, Citizenship and Immigration Act 2009 s 7(1). Section 7 applies to an enactment passed or made before the end of the session in which the 2009 Act is passed and an instrument or document issued before the passing of the Act: Borders, Citizenship and Immigration Act 2009 s 7(7). This includes Commissioners for Revenue and Customs Act 2005 ss 5(1)(b), (2)(b), 9, 24(1), (2), (3)(e), (4)-(7), 25(1), (1A), (5), (6), 25A(2), 26, 31, and 33 (other than the application of s 33 to an offence under 2005 Act s 30), but does not include any other enactment contained in the 2005 Act: Borders, Citizenship and Immigration Act 2009 s 7(8). Section 7(1) does not apply to any function of making, by statutory instrument, any regulations, rules or an order; and any function of issuing notices, directions or conditions that relate to value added tax and that apply generally to any person falling within their terms: Borders, Citizenship and Immigration Act 2009 s 7(3).

6 Borders, Citizenship and Immigration Act 2009 s 7(4).

7 See Borders, Citizenship and Immigration Act 2009 s 8.

8 See Borders, Citizenship and Immigration Act 2009 s 9.

9 See Borders, Citizenship and Immigration Act 2009 s 10.

10 Borders, Citizenship and Immigration Act 2009 s 11(1). Section 11 applies to an enactment passed or made, or an instrument or document issued, before the 2009 Act is passed and, subject to express provision to the contrary, an enactment passed or made, or an instrument or document issued, after the 2009 Act is passed: Borders, Citizenship and Immigration Act 2009 s 11(6). This includes Commissioners for Revenue and Customs Act 2005 ss 2(4), 6, 25(1), (1A), (5), 25A(1), 26, 31, 32, and 33 (other than the application of s 33 to an offence under the 2005 Act s 30), but does not otherwise include any enactment contained in the 2005 Act: Borders,

Citizenship and Immigration Act 2009 s 11(7). Section 11 has effect subject to any limitation specified in the official's designation under the 2009 Act s 12 and any designation of the official under the 2009 Act s 3 (PARA 140C.1): Borders, Citizenship and Immigration Act 2009 s 11(8).

11 'Customs revenue function' means (1) a function that is exercisable (a) by the Director by virtue of Borders, Citizenship and Immigration Act 2009 s 7; or (b) by customs revenue officials by virtue of 2009 Act s 11; (2) a function that is conferred on customs revenue officials or the Director by or by virtue of 2009 Act ss 22, 23; or (3) a function under Community law that is exercisable by the Director or customs revenue officials in relation to a customs revenue matter: Borders, Citizenship and Immigration Act 2009 s 7(9).

12 Borders, Citizenship and Immigration Act 2009 s 11(2).

13 Borders, Citizenship and Immigration Act 2009 s 11(3).

14 See Borders, Citizenship and Immigration Act 2009 s 12.

15 Borders, Citizenship and Immigration Act 2009 s 13.

3. Use and disclosure of information

A person specified below may use customs information¹ acquired by him in connection with a function exercisable by him for the purpose of any other function exercisable by him, and disclose customs information to any other person to whom those provisions apply for the purpose of a function exercisable by that person². The persons so specified are as follows: (1) a designated customs official³; (2) an immigration officer; (3) the Secretary of State by whom general customs functions are exercisable; (4) any other minister in the department of that Secretary of State; (5) the Director of Border Revenue⁴; and (6) a person acting on behalf of a person mentioned in heads (1)-(5)⁵. The above provisions are without prejudice to the use by a person to whom it applies of information other than customs information, and the disclosure by or to a person to whom it applies of information other than customs information⁶.

Subject to specified exceptions⁷, a person who is or was a relevant official⁸, the Secretary of State by whom general customs functions are exercisable, or another minister in that Secretary of State's department may not disclose personal customs information⁹ to a person who is not (a) a relevant official; or (b) a minister in that department¹⁰. Subject to the same exceptions, a person who is or was a relevant official may not disclose personal customs revenue information¹¹ to a minister¹². Without prejudice to any other restriction on the disclosure of personal customs information, the prohibition does not apply to information supplied by or on behalf of Her Majesty's Revenue and Customs or the Revenue and Customs Prosecutions Office¹³.

A person to whom information is disclosed¹⁴ may not disclose that information without the consent of a relevant official (which may be general or specific)¹⁵.

A person commits an offence if he breaches the prohibitions¹⁶ on disclosure of personal customs information or on further disclosure of such information¹⁷. It is a defence for a person charged with such an offence to prove that he reasonably believed that the disclosure was lawful or that the information had already and lawfully been made available to the public¹⁸. A prosecution for the offence may be brought in England and Wales only with the consent of the Director of Public Prosecutions or the Director of Revenue and Customs Prosecutions¹⁹. A person guilty of the offence is liable (i) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both; or (ii) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both²⁰.

Nothing in the above provisions²¹ authorises the making of a disclosure which contravenes the Data Protection Act 1998 or is prohibited by the Regulation of Investigatory Powers Act 2000 Pt 1²².

1 'Customs information' means information acquired or capable of being acquired as a result of the exercise of a customs function; and 'customs function' means a general customs function or a customs revenue function: Borders, Citizenship and Immigration Act 2009 s 14(6). For the meaning of 'general customs function', see PARA 140C.1; and for the meaning of 'customs revenue function', see PARA 140C.2. It is immaterial whether the information was acquired or is capable of being acquired by the person by whom it is held or another person, and whether the information was also acquired or is also capable of being acquired in the exercise of any other function: s 14(7).

2 Borders, Citizenship and Immigration Act 2009 s 14(1). Section 14 is subject to any provision that restricts or prohibits the use or disclosure of information and that is contained in (1) Borders, Citizenship and Immigration Act 2009 Pt 1 (ss 1-38); (2) any other enactment; or (3) an international or other agreement to which the United Kingdom or Her Majesty's Government is party: s 14(3). An 'enactment' does not include an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales, or Northern Ireland legislation: s 14(4).

3 'Designated customs official' means a general customs official or a customs revenue official: Borders, Citizenship and Immigration Act 2009 s 14(6). As to the designation of customs revenue officials see PARAS 140C.1, C.2.

4 As to the Director of Border Revenue see PARA 140C.2.

5 Borders, Citizenship and Immigration Act 2009 s 14(2).

6 Borders, Citizenship and Immigration Act 2009 s 14(5).

7 As to the exceptions so specified see Borders, Citizenship and Immigration Act 2009 s 16. These provisions are also subject to any enactment (other than an enactment contained in Borders, Citizenship and Immigration Act 2009 Pt 1 (ss 1-38)) permitting disclosure, where the disclosure in question does not contravene any restriction imposed by the Commissioners for Her Majesty's Revenue and Customs on the disclosure of customs revenue information: Borders, Citizenship and Immigration Act 2009 s 15(6)(b). An 'enactment' does not include an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales, or Northern Ireland legislation: s 15(8).

8 'Relevant official' means (a) a designated customs official; (b) an immigration officer; (c) the Director of Border Revenue; or (d) a person acting on behalf of the Secretary of State by whom general customs functions are exercisable or a person mentioned in heads (a)-(c): Borders, Citizenship and Immigration Act 2009 s 15(3).

9 'Personal customs information' means customs information relating to a person that identifies that person or enables that person to be identified (either by itself or in combination with other information): Borders, Citizenship and Immigration Act 2009 s 15(4).

10 Borders, Citizenship and Immigration Act 2009 s 15(1). A person does not breach the 2009 Act s 15(1) by disclosing information he knows was acquired otherwise than as the result of the exercise of a customs function: s 15(5)(a).

11 'Personal customs revenue information' means customs revenue information relating to a person that identifies that person or enables that person to be identified (either by itself or in combination with other information): Borders, Citizenship and Immigration Act 2009 s 15(4). 'Customs revenue information' means information acquired or capable of being acquired as a result of the exercise of a customs revenue function: Borders, Citizenship and Immigration Act 2009 s 14(6).

12 Borders, Citizenship and Immigration Act 2009 s 15(2). A person does not breach the 2009 Act s 15(2) by disclosing information he knows was acquired otherwise than as the result of the exercise of a customs revenue function: s 15(5)(b).

13 Borders, Citizenship and Immigration Act 2009 s 15(7).

14 In reliance on Borders, Citizenship and Immigration Act 2009 ss 16, 17.

15 Borders, Citizenship and Immigration Act 2009 s 17(1). A person does not breach s 17(1) by making a disclosure (i) to which s 16(3)-(8) applies; and (ii) which, in the case of a disclosure of customs revenue information, does not contravene any restriction imposed by the Commissioners for Her Majesty's Revenue and Customs: s 17(2). Head (ii) does not apply if the person making the disclosure knows that the information was acquired otherwise than as the result of the exercise of a customs revenue function: s 17(3). Section 17 is also subject to any other enactment permitting disclosure: s 17(4). An 'enactment' does not include an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales, or Northern Ireland legislation: s 17(5).

16 le the prohibitions contained in Borders, Citizenship and Immigration Act 2009 ss 15(1), (2), 17(1).

17 Borders, Citizenship and Immigration Act 2009 s 18(1). Section 18 is without prejudice to the pursuit of any remedy or the taking of any action in relation to a breach of the 2009 Act ss 15(1), (2), 17(1) (whether or not s 18 applies to the breach): s 18(4).

18 Borders, Citizenship and Immigration Act 2009 s 18(2).

19 Borders, Citizenship and Immigration Act 2009 s 18(3).

20 Borders, Citizenship and Immigration Act 2009 s 18(5). In relation to an offence committed before the commencement of Criminal Justice Act 2003 s 282, the reference in head (ii) to 12 months has effect as if it were a reference to 6 months: s 18(6).

21 le Borders, Citizenship and Immigration Act 2009 ss 14-17.

22 Borders, Citizenship and Immigration Act 2009 s 19(1). Information whose disclosure is prohibited by the 2009 Act ss 15(1), (2), 17(1) is exempt information by virtue of Freedom of Information Act 2000 s 44(1)(a) (CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 605): Borders, Citizenship and Immigration Act 2009 s 19(2). 2009 Act ss 15(6), 16, 17(2), (4) are to be disregarded in determining for these purposes whether the disclosure of personal customs information is prohibited: s 19(3). As to the Data Protection Act 1998 see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 503 et seq. As to the Regulation of Investigatory Powers Act 2000 Pt 1 (ss 1-25) see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 506 et seq.

4. Transfer of property, prosecution of offences, etc

The Commissioners for Her Majesty's Revenue and Customs are empowered to make schemes for the transfer of specified property, rights and liabilities¹. Her Majesty's Revenue and Customs and any person by whom functions relating to immigration, asylum, nationality or customs are exercisable may make facilities and services available to each other for the purpose of exercising any of those functions². The Director of Border Revenue ('the Director')³ and the Secretary of State must pay to the Commissioners any money received by way of revenue or security in the exercise of their customs revenue functions⁴ or, as the case may be, general customs functions⁵. The Treasury may by order direct the Secretary of State or the Director to pay the money so received in the exercise of their customs functions into the Consolidated Fund⁶.

The Attorney General may by order assign functions to the Director of Revenue and Customs Prosecutions to institute and assume the conduct of criminal proceedings and to provide advice relating to criminal investigations carried out by (1) designated customs officials⁷; (2) immigration officers; (3) officials of the Secretary of State; (4) the Secretary of State; (5) the Director; (6) anyone acting on behalf of a person mentioned in heads (1)-(5); and (7) constables⁸. The Secretary of State may make regulations conferring functions on Her Majesty's Inspectors of Constabulary in relation to designated customs officials and others exercising customs functions and functions relating to immigration, asylum or nationality⁹.

1 See Borders, Citizenship and Immigration Act 2009 s 26.

2 See Borders, Citizenship and Immigration Act 2009 s 27.

3 As to the Director of Border Revenue see PARA 140C.2.

4 For the meaning of 'customs revenue function' see PARA 140C.2.

5 See Borders, Citizenship and Immigration Act 2009 s 32. For the meaning of 'general customs function' see PARA 140C.1.

6 See Borders, Citizenship and Immigration Act 2009 s 33.

7 As to the designation of customs officials see PARAS 140C.1, C.2.

8 See Borders, Citizenship and Immigration Act 2009 s 31. As to the functions of the Director of Revenue and Customs Prosecutions see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1193.

9 See Borders, Citizenship and Immigration Act 2009 s 29; and POLICE vol 36(1) (2007 Reissue) PARA 206.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(i) In general/141. Provision of facilities for immigration control.

141. Provision of facilities for immigration control.

As from a day to be appointed¹, the person responsible for the management of a control port² is required to provide the Secretary of State³, free of charge, with such facilities⁴ at the port as the Secretary of State may direct⁵ as being reasonably necessary for, or in connection with, the operation of immigration control there⁶. If the manager persistently fails to comply with the direction (or part of it), the Secretary of State may either revoke the port's approval (if it is a control port which is not a port of entry)⁷ or by order revoke its designation as a port of entry (if it is so designated)⁸.

As from a day to be appointed⁹, the Secretary of State may, at the request of any person and in consideration of such charges as he may determine, make arrangements for the provision at any control port of immigration officers or facilities¹⁰ in addition to those (if any) needed to provide a basic service¹¹ at the port¹², and for the provision of immigration officers or facilities for dealing with passengers of a particular description or in particular circumstances¹³.

1 The provisions of the Immigration and Asylum Act 1999 ss 25, 26 are to be brought into force as from a day to be appointed by order under s 170(4). At the date at which this volume states the law no such order had been made.

2 I.e. a port in which a control area is designated under the Immigration Act 1971 Sch 2 para 26(3) (see para 145 post): Immigration and Asylum Act 1999 ss 25(6), 26(2) (ss 25, 26 not yet in force: see note 1 supra). As to the ports of entry and exit see the Immigration Act 1971 s 33(3) (definition applied by the Immigration and Asylum Act 1999 s 167(1)); and paras 143 note 22, 145 note 5 post.

3 As to the Secretary of State see para 2 ante.

4 'Facilities' means accommodation, facilities, equipment and services of a class or description specified in an order made by the Secretary of State: Immigration and Asylum Act 1999 s 25(7) (not yet in force: see note 1 supra). At the date at which this volume states the law no such order had been made.

5 Before giving any such direction, the Secretary of State must consult such persons likely to be affected by it as he considers appropriate (Immigration and Asylum Act 1999 s 25(2) (not yet in force: see note 1 supra)) and, if he gives such a direction, he must send a copy of it to the person appearing to him to be the manager (s 25(3) (not yet in force: see note 1 supra)). A direction is enforceable, on the application of the Secretary of State, by injunction granted by a county court: s 25(5)(a) (not yet in force: see note 1 supra).

6 Ibid s 25(1) (not yet in force: see note 1 supra).

7 Ibid s 25(4)(a) (not yet in force: see note 1 supra). The reference in the text to a port's approval is a reference to an approval given in relation to the port under the Immigration Act 1971 Sch 2 para 26(1) (as amended or modified) (see para 145 post).

8 Immigration and Asylum Act 1999 s 25(4)(b) (not yet in force: see note 1 supra). As to the designation of ports of entry see para 145 note 5 post.

The power to make orders under the Immigration and Asylum Act 1999 is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and any such instrument may: (1) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate; (2) make different provision for different cases or descriptions of case; and (3) make different provision for different areas: s 166(1), (2).

9 See note 1 supra.

10 'Facilities' includes equipment: Immigration and Asylum Act 1999 s 26(3) (not yet in force: see note 1 supra).

11 'Basic service' has such meaning as may be prescribed by regulations: *ibid* s 26(4) (not yet in force: see note 1 supra). At the date at which this volume states the law no such regulations had been made. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

12 *Ibid* s 26(1)(a) (not yet in force: see note 1 supra).

13 *Ibid* s 26(1)(b) (not yet in force: see note 1 supra).

UPDATE

141 Provision of facilities for immigration control

TEXT AND NOTE 1--Days now appointed in relation to 1999 Act ss 25, 26: SI 2003/2, SI 2003/1469.

NOTE 4--See Immigration Control (Provision of Facilities at Ports) Order 2003, SI 2003/612.

NOTE 8--Reference to 1999 Act s 166(1), (2) should be to s 166(1), (3), (6).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(i) In general/142. Supply of information.

142. Supply of information.

Information held by:

- 401 (1) a chief officer of police¹;
- 402 (2) the Director General of the National Criminal Intelligence Service²;
- 403 (3) the Director General of the National Crime Squad³;
- 404 (4) the Commissioners of Customs and Excise⁴, or a person providing services to them;
- 405 (5) a person with whom the Secretary of State has made a contract or other arrangements for the provision of support for asylum-seekers⁵ or a sub-contractor of such a person; or
- 406 (6) any specified⁶ person, for purposes specified in relation to that person⁷,

may be supplied to the Secretary of State for use for immigration purposes⁸.

Information held by the Secretary of State in connection with the exercise of functions under any of the Immigration Acts may be supplied to:

- 407 (a) a chief officer of police, for use for police purposes⁹;
- 408 (b) the Director General of the National Criminal Intelligence Service, for use for NCIS purposes¹⁰;
- 409 (c) the Director General of the National Crime Squad, for use for NCS purposes¹¹;
- 410 (d) the Commissioners of Customs and Excise, or a person providing services to them, for use for customs purposes¹²; or

411 (e) any specified person, for use for purposes specified in relation to that person¹³.

The circumstances in which information may be supplied are not limited by the provisions described above¹⁴.

1 'Chief officer of police' means the chief officer of police for a police area in England and Wales: Immigration and Asylum Act 1999 s 20(4)(a).

2 As to the Director General of the National Criminal Intelligence Service see POLICE vol 36(1) (2007 Reissue) para 430 et seq.

3 As to the Director General of the National Crime Squad see POLICE vol 36(1) (2007 Reissue) para 430 et seq.

4 As to the Commissioners of Customs and Excise see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 900 et seq.

5 Ie under the Immigration and Asylum Act 1999 s 95 (see para 246 post) or s 98 (see para 250 post). As to the Secretary of State see para 2 ante.

6 Ie specified in an order made by the Secretary of State: ibid s 20(5). At the date at which this volume states the law no such order had been made. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante. No order is to be made under s 20 unless a draft of the order has been laid before Parliament and approved by a resolution of each House (s 166(4)(a)), and accordingly any statutory instrument made under s 20 is not subject to annulment by a resolution of either House of Parliament (s 166(6)(a)).

7 Ibid s 20(1).

8 Ibid s 20(2). 'Immigration purposes' means: (1) the administration of immigration control under the Immigration Acts; (2) the prevention, detection, investigation or prosecution of criminal offences under those Acts; (3) the imposition of penalties or charges under the Immigration and Asylum Act 1999 Pt II (ss 32-42); (4) the provision of support for asylum-seekers and their dependants under Pt VI (ss 94-127) (as amended); (5) such other purposes as may be specified: s 20(3). For the meaning of 'the Immigration Acts' see para 83 ante.

9 'Police purposes' means the prevention, detection, investigation or prosecution of criminal offences, safeguarding national security, or such other purposes as may be specified: Immigration and Asylum Act 1999 s 21(3).

10 'NCIS purposes' means any of the functions of the National Criminal Intelligence Service mentioned in the Police Act 1997 s 2 (as amended) (see POLICE): Immigration and Asylum Act 1999 s 21(4).

11 'NCS purposes' means any of the functions of the National Crime Squad mentioned in the Police Act 1997 s 48 (see POLICE): Immigration and Asylum Act 1999 s 21(5).

12 'Customs purposes' means any of the commissioners' functions in relation to: (1) the prevention, detection, investigation or prosecution of criminal offences; (2) the prevention, detection or investigation of conduct in respect of which any enactment provides for penalties which are not criminal penalties; (3) the assessment or determination of penalties which are not criminal penalties; (4) checking the accuracy of information relating to, or provided for purposes connected with, any matter under the care and management of the commissioners or any assigned matter (see the Customs and Excise Management Act 1979 s 1(1); and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) para 900 et seq); (5) amending or supplementing any such information (where appropriate); (6) legal or other proceedings relating to anything mentioned in heads (1)-(5) supra; (7) safeguarding national security; and (8) such other purposes as may be specified: Immigration and Asylum Act 1999 s 21(6).

13 Ibid s 21(1), (2). 'Specified' means specified in an order made by the Secretary of State: s 21(5). At the date at which this volume states the law no such order had been made. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante. No order is to be made under s 21 unless a draft of the order has been laid before Parliament and approved by a resolution of each House (s 166(4)(b)), and accordingly any statutory instrument made under s 21 is not subject to annulment by a resolution of either House of Parliament (s 166(6)(a)).

14 Ibid ss 20(6), 21(8).

UPDATE**142 Supply of information**

TEXT AND NOTES--For further provision relating to information see PARA 142A; and for provision relating to the supply of revenue and customs information see PARA 142B.

Where a document comes into the possession of the Secretary of State or an immigration officer in the course of the exercise of an immigration function, the Secretary of State or an immigration officer may retain the document while he suspects that (i) a person to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and (ii) retention of the document may facilitate the removal: Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 17.

NOTES--As to the power of port medical inspectors and staff working under their direction to disclose information to health service bodies for specific medical purposes see the Nationality, Immigration and Asylum Act 2002 s 133; and PARA 143.

TEXT AND NOTES 1-7--Heads (2), (3) now head (2) the Serious Organised Crime Agency: 1999 Act s 20(1) (amended by Serious Organised Crime and Police Act 2005 Sch 4 para 123).

Head (4) repealed: UK Borders Act 2007 s 40(6)(a), Schedule. See now PARA 142B. See the Immigration (Supply of Information to the Secretary of State for Immigration Purposes) Order 2008, SI 2008/2077, which specifies persons and purposes for the purposes of the 1999 Act s 20(1).

TEXT AND NOTE 1--Now information, documents or articles so held: 1999 Act s 20(2) (amended by Nationality, Immigration and Asylum Act 2002 s 132(3)).

TEXT AND NOTE 8--The 1999 Act s 20 also applies to a document or article which comes into the possession of a person listed in heads (1)-(6) or someone acting on his behalf, or is discovered by a person so listed: 1999 Act s 20(1A) (added by Nationality, Immigration and Asylum Act 2002 s 132(2)). The Secretary of State may retain for immigration purposes a document or article supplied to him under the 1999 Act s 20(2), and dispose of a document or article so supplied to him in such manner as he thinks appropriate, and the reference to use in s 20(2) includes a reference to disposal: s 20(2A) (added by 2002 Act s 132(4)).

Information may now be supplied under the 1999 Act s 20 for use for the purpose of (1) determining whether an applicant for naturalisation under the British Nationality Act 1981 is of good character; (2) determining whether, for the purposes of an application referred to in British Nationality Act 1981 s 41A, the person for whose registration the application is made is of good character; (3) determining whether, for the purposes of an application under Hong Kong (War Wives and Widows) Act 1996 s 1, the woman for whose registration the application is made is of good character; (4) determining whether, for the purposes of an application under British Nationality (Hong Kong) Act 1997 s 1 for the registration of an adult or young person within the meaning of 1997 Act s 1(5A), the person is of good character; and (5) determining whether to make an order in respect of a person under the British Nationality Act 1981 s 40: Nationality, Immigration and Asylum Act 2002 s 131 (amended by UK Borders Act 2007 s 43 and Borders, Citizenship and Immigration Act 2009 s 47(4)). As to naturalisation generally see PARA 37.

TEXT AND NOTES 9-13--Heads (b), (c) now head (b) the Serious Organised Crime Agency, for use for SOCA purposes: 1999 Act s 21(1) (amended by Serious Organised Crime

and Police Act 2005 Sch 4 para 124(2)). 'SOCA purposes' means any of the functions of the Serious Organised Crime Agency mentioned in the 2005 Act s 2, 3 or 5: 1999 Act s 21(4) (substituted by 2005 Act Sch 4 para 124(3)).

TEXT AND NOTE 14--Reference to information is now to information, documents or articles: 1999 Act s 20(6) (amended by Nationality, Immigration and Asylum Act 2002 s 132(5)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(i) In general/142A. Information.

142A. Information.

1. Duty to share information

The following provisions¹ apply to (1) designated customs officials², (2) immigration officers, (3) the Secretary of State in so far as he has general customs functions³, (4) the Secretary of State in so far as he has functions relating to immigration, asylum or nationality, (5) the Director of Border Revenue and any person exercising functions of the Director⁴, (6) a chief officer of police⁵, and (7) Her Majesty's Revenue and Customs⁶. The persons specified above⁷ must share information which (a) is obtained or held in the exercise of a power specified by the Secretary of State and the Treasury jointly by order and relates to (i) passengers on a ship or aircraft, (ii) crew of a ship or aircraft, (iii) freight on a ship or aircraft, or (iv) flights or voyages, or (b) relates to such other matters in respect of travel or freight as the Secretary of State and the Treasury may jointly specify by order⁸; and which is obtained or held by them in the course of their functions to the extent that the information is likely to be of use for (A) immigration purposes⁹, (B) police purposes¹⁰, or (C) Revenue and Customs purposes¹¹. The Secretary of State and the Treasury may make an order¹² which has the effect of requiring information to be shared only if satisfied that (aa) the sharing is likely to be of use for immigration purposes, police purposes, or Revenue and Customs purposes, and (bb) the nature of the information is such that there are likely to be circumstances in which it can be shared¹³ without breaching Convention rights (within the meaning of the Human Rights Act 1998)¹⁴.

The above provisions have effect despite any restriction on the purposes for which information may be disclosed or used¹⁵.

1 The Immigration, Asylum and Nationality Act 2006 s 36. Sections 36, 37 (see PARA 142A.2), 39 (see PARA 142A.3) are modified by SI 1993/1813 (amended by SI 2007/3579) so as to apply in relation to trains arriving in and departing from the United Kingdom via the Channel Tunnel.

2 'Designated customs official' has the meaning given by Borders, Citizenship and Immigration Act 2009 Pt 1 (ss 1-38) (see PARA 140C.1): 2006 Act s 36(9) (amended by Borders, Citizenship and Immigration Act 2009 s 21(3)).

3 'General customs function' has the meaning given by Borders, Citizenship and Immigration Act 2009 Pt 1 (ss 1-38) (see PARA 140C.1): 2006 Act s 36(9) (amended by Borders, Citizenship and Immigration Act 2009 s 21(3)).

4 As to the Director of Border Revenue see PARA 140C.2.

5 'Chief officer of police' in the 2006 Act ss 36 and 39 (see PARA 142A.3) means the chief officer of police for a police area specified in Police Act 1996 s 1 (see POLICE vol 36(1) (2007 Reissue) PARA 136): 2006 Act ss 36(9), 39(3).

6 Ibid s 36(1) (amended by Borders, Citizenship and Immigration Act 2009 s 21(1)).

7 le specified in 2006 Act s 36(1).

8 Ibid s 36(4). See Immigration, Asylum and Nationality Act 2006 (Duty to Share Information and Disclosure of Information for Security Purposes) Order 2008, SI 2008/539.

An order under the 2006 Act s 36(4) may not specify (1) a power of Her Majesty's Revenue and Customs if or in so far as it relates to a matter to which Commissioners for Revenue and Customs Act 2005 s 7 (see INCOME TAXATION vol 23(1) (Reissue) PARA 31) applies, or (2) a matter to which s 7 applies: 2006 Act s 36(7). An order under s 36(4) (a) must be made by statutory instrument, and (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament: s 36(8).

9 'Immigration purposes' has the meaning given by Immigration and Asylum Act 1999 s 20(3) (see PARA 142): 2006 Act s 36(9).

10 'Police purposes' has the meaning given by the 1999 Act s 21(3) (see PARA 142): 2006 Act s 36(9).

11 Ibid s 36(2). 'Revenue and Customs purposes' means those functions of Her Majesty's Revenue and Customs specified in the 1999 Act s 21(6): 2006 Act s 36(9). Information shared in accordance with s 36(2) (1) must be made available to each of the persons or descriptions of persons specified in s 36(1), and (2) may be used for immigration purposes, police purposes or Revenue and Customs purposes (regardless of its source): s 36(6) (amended by Borders, Citizenship and Immigration Act 2009 s 21(2)).

12 le under the 2006 Act s 36(4).

13 le under ibid s 36(2).

14 Ibid s 36(5).

15 Ibid s 36(10).

2. Information sharing: code of practice

The Secretary of State and the Treasury must jointly issue one or more codes of practice about (1) the use of information shared¹, and (2) the extent to which, or form or manner in which, shared information is to be made available². A code (a) must not be issued unless a draft has been laid before Parliament, and (b) comes into force in accordance with provision made by order of the Secretary of State and the Treasury jointly³.

1 In accordance with the Immigration, Asylum and Nationality Act 2006 s 36(2): see PARA 142A.1.

2 In accordance with ibid s 36(6): s 37(1).

3 Ibid s 37(2). See the Immigration, Asylum and Nationality Act 2006 (Data Sharing Code of Practice) Order 2008, SI 2008/8. The Secretary of State and the Treasury must jointly from time to time review a code and may revise and re-issue it following a review; and the 2006 Act s 37(2) applies to a revised code: s 37(3). An order under s 37(2) (a) must be made by statutory instrument, and (b) is subject to annulment in pursuance of a resolution of either House of Parliament: s 37(4). As to the modification of s 37 see PARA 142A.1.

3. Disclosure to law enforcement agencies

A chief officer of police¹ may disclose information² to (1) the States of Jersey police force; (2) the salaried police force of the Island of Guernsey; (3) the Isle of Man constabulary; (4) any other foreign law enforcement agency³.

1 For the meaning of 'chief officer of police' see PARA 142A.1.

2 le information obtained in accordance with ibid s 32 (see PARA 146A.1) or 33 (see PARA 146A.2).

3 Ibid s 39(1). 'Foreign law enforcement agency' means a person outside the United Kingdom with functions similar to functions of (1) a police force in the United Kingdom, or (2) the Serious Organised Crime Agency: s 39(2). As to the modification of s 39 see PARA 142A.1

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(i) In general/142B. Supply of Revenue and Customs information.

142B. Supply of Revenue and Customs information.

1. General

Her Majesty's Revenue and Customs ('HMRC') and the Revenue and Customs Prosecutions Office ('RCPO') may each supply the Secretary of State with information for use for specified purposes relating to the exercise of the Secretary of State's immigration and nationality functions¹. These provisions² apply to a document or article which comes into the possession of, or is discovered by, HMRC or the RCPO, or a person acting on behalf of HMRC or the RCPO, as it applies to information³. The Secretary of State (1) may retain⁴ a document or article⁵; (2) may dispose of a document or article⁶. A power conferred by these provisions on HMRC or the RCPO may be exercised on behalf of HMRC or the RCPO by a person who is authorised (generally or specifically) for the purpose⁷.

1 See UK Borders Act 2007 s 40(1) (amended by Borders, Citizenship and Immigration Act 2009 s 47(5)) which specifies the following purposes (1) administering immigration control under the Immigration Acts; (2) preventing, detecting, investigating or prosecuting offences under those Acts; (3) determining whether to impose, or imposing, penalties or charges under Immigration and Asylum Act 1999 Pt 2 (ss 32-43) (carriers' liability); (4) determining whether to impose, or imposing, penalties under Immigration, Asylum and Nationality Act 2006 s 15 (restrictions on employment); (5) providing facilities, or arranging for the provision of facilities, for the accommodation of persons under Immigration and Asylum Act 1999 s 4; (6) providing support for asylum-seekers and their dependants under the 1999 Act Pt 6 (ss 94-127); (7) determining whether an applicant for naturalisation under British Nationality Act 1981 is of good character; (8) determining whether, for the purposes of an application referred to in British Nationality Act 1981 s 41A, the person for whose registration the application is made is of good character; (9) determining whether, for the purposes of an application under Hong Kong (War Wives and Widows) Act 1996 s 1, the woman for whose registration the application is made is of good character; (10) determining whether, for the purposes of an application under British Nationality (Hong Kong) Act 1997 s 1 for the registration of an adult or young person within the meaning of the 1997 Act s 1(5A), the person is of good character; (11) determining whether to make an order in respect of a person under British Nationality Act 1981 s 40 (deprivation of citizenship); (12) doing anything else in connection with the exercise of immigration and nationality functions. In the 2007 Act s 40(1) 'immigration and nationality functions' means functions exercisable by virtue of (a) the Immigration Acts, (b) the British Nationality Act 1981, (c) the Hong Kong Act 1985, (d) the Hong Kong (War Wives and Widows) Act 1996, or (e) the British Nationality (Hong Kong) Act 1997: 2007 Act s 40(4).

2 Ie 2007 Act s 40.

3 Ibid s 40(2).

4 Ie for a purpose within ibid s 40(1).

5 Ie supplied by virtue of ibid s 40(2).

6 Ibid s 40(3), referring to a document or article supplied by virtue of s 40(2).

7 Ibid s 40(5).

2. Confidentiality

A person to whom relevant information¹ is supplied² (whether before or after 31 January 2008³) may not disclose that information⁴.

1 Information is relevant information if it is supplied by or on behalf of HMRC (see PARA 142B.1) or the RCPO (see PARA 142B.1) under (1) the Immigration and Asylum Act 1999 s 20, (2) the Nationality, Immigration and Asylum Act 2002 s 130 (repealed), (3) the Immigration, Asylum and Nationality Act 2006 s 36 (except in so far as s 36 relates to information supplied to a chief officer of police), or (4) the UK Borders Act 2007 s 40 (see PARA 142B.1): s 41(2). The reference in s 41(2) to information supplied under s 40 includes a reference to documents or articles supplied by virtue of s 40(2): s 41(6).

2 The reference in *ibid* s 41(1) to a person to whom relevant information is supplied includes a reference to a person who is or was acting on behalf of that person: s 41(5).

3 *le* whether before or after the commencement of *ibid* s 41 (see SI 2008/99).

4 2007 Act s 41(1). Section 41(1) does not apply to a disclosure (1) which is made for a purpose within s 40(1), (2) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to an immigration or nationality matter, (3) which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to an immigration or nationality matter, (4) which is made in pursuance of an order of a court, (5) which is made with the consent (which may be general or specific) of HMRC or the RCPO, depending on by whom or on whose behalf the information was supplied, or (6) which is made with the consent of each person to whom the information relates: s 41(3). In s 41(3) 'immigration or nationality matter' means a matter in respect of which the Secretary of State has immigration and nationality functions (within the meaning given in s 40(4)): s 41(7).

Section 41(1) is subject to any other enactment permitting disclosure: s 41(4). In s 41(4) 'enactment' does not include (a) an Act of the Scottish Parliament, (b) an Act of the Northern Ireland Assembly, or (c) an instrument made under an Act within head (a) or (b): s 41(8).

3. Supply of information to the UK Border Agency and onward disclosure

Her Majesty's Revenue and Customs ('HMRC') and the Revenue and Customs Prosecutions Office ('RCPO') may each supply (1) a designated customs official; (2) the Secretary of State by whom general customs functions are exercisable; (3) the Director of Border Revenue; and (4) a person acting on behalf of a person mentioned in heads (1)-(3), with information for use for the purpose of the customs functions exercisable by those persons¹. The power so conferred may be exercised on behalf of HMRC or the RCPO by a person who is authorised (generally or specifically) for the purpose². A person to whom information³ is supplied under the above provision may not disclose that information⁴. However, this prohibition does not apply to a disclosure which is made (1) for the purpose of a customs function, where the disclosure does not contravene any restriction imposed by the Commissioners for Her Majesty's Revenue and Customs; (2) for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a customs function; (3) for the purpose of a criminal investigation or criminal proceedings (whether or not within the United Kingdom); (4) in pursuance of an order of a court; (5) with the consent (which may be general or specific) of HMRC or the RCPO, depending on by whom or on whose behalf the information was supplied; and (6) with the consent of each person to whom the information relates⁵.

1 UK Borders Act 2007 s 41A(1), (2) (ss 41A, 41B added by Borders, Citizenship and Immigration Act 2009 s 20(1)). As to the customs functions of the Secretary of State, immigration officers, etc see PARA 140C. Section 41A applies to a document or article which comes into the possession of, or is discovered by, HMRC or the RCPO, or a person acting on behalf of HMRC or the RCPO, as it applies to information: UK Borders Act 2007 s 41A(3). A person to whom a document or article is supplied may retain it for the purpose of the customs functions exercisable by him or dispose of it: UK Borders Act 2007 s 41A(4).

2 UK Borders Act 2007 s 41A(5).

3 'Information' supplied includes documents or articles (see NOTE 1): UK Borders Act 2007 s 41B(4). 'A person to whom information is supplied' includes a person who is or was acting on behalf of that person: UK Borders Act 2007 s 41B(5).

4 UK Borders Act 2007 s 41B(1). Section 41B(1) is subject to any other enactment permitting disclosure: UK Borders Act 2007 s 41B(3). An 'enactment' does not include an Act of the Scottish Parliament, an Act of the Northern Ireland Assembly, or an instrument made under such an Act: UK Borders Act 2007 s 41B(6).

5 UK Borders Act 2007 s 41B(2).

4. Wrongful disclosure

An offence is committed by a person who contravenes provisions relating to confidentiality¹ by disclosing information relating to a person whose identity (1) is specified in the disclosure, or (2) can be deduced from it². It is a defence for a person (P) charged with an offence under these provisions³ of disclosing information to prove that P reasonably believed (a) that the disclosure was lawful, or (b) that the information had already and lawfully been made available to the public⁴. A person guilty of an offence under these provisions is liable (i) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or (ii) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum⁵ or to both⁶. A prosecution for an offence under these provisions may be instituted only with the consent of the Director of Public Prosecutions⁷.

1 I.e. a person who contravenes UK Borders Act 2007 s 41 (see PARA 142B.2) or s 41B (see PARA 142B.3).

2 Ibid s 42(1) (amended by Borders, Citizenship and Immigration Act 2009 s 20(2)). Section 42(1) does not apply to the disclosure of information about internal administrative arrangements of HMRC (see PARA 142B.1) or the RCPO (see PARA 142B.1) (whether relating to Commissioners, officers, members of the RCPO or others): s 42(2).

3 I.e. under 2007 Act s 42.

4 Ibid s 42(3).

5 As to the statutory maximum see PARA 158.

6 2007 Act s 42(4). The reference in head (ii) in the text to 12 months must be treated as a reference to six months in the application of s 42 in relation to an offence under s 42 committed before the commencement of the Criminal Justice Act 2003 s 282 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1121): 2007 Act s 42(5).

7 Ibid s 42(6)(a).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(ii) Powers and Duties in relation to Arrivals/143. Power to examine.

(ii) Powers and Duties in relation to Arrivals

143. Power to examine.

An immigration officer may examine any persons who have arrived in the United Kingdom¹ by ship or aircraft or who are seeking to arrive in the United Kingdom through the Channel Tunnel system, for the purpose of determining: (1) whether any of them is or is not a British citizen; (2) whether, if he is not, he may or may not enter the United Kingdom without leave; and (3) whether, if he may not, he has been given leave which is still in force or he should be given leave and for what period or on what conditions (if any) or he should be refused leave². The examination may be continued away from the place of entry and at a later date³. An immigration officer may also examine any person travelling on a train travelling to London from Paris, Lille or Brussels even if it is on French or Belgian territory, if it is within the control zone agreed with those countries⁴.

A person who is seeking to enter the United Kingdom may also be examined by a medical inspector or by any qualified person carrying out a test or examination required by a medical inspector⁵. A person is guilty of an offence if, without reasonable excuse, he refuses or fails to submit to examination⁶.

Where an immigration officer on examining him is satisfied that a person has come to the United Kingdom for the purpose of joining a ship or aircraft as a member of the crew, the immigration officer may limit the duration of any leave to enter the United Kingdom by requiring him to leave the United Kingdom in a ship or aircraft specified or indicated by the notice giving leave⁷. If the crew member is being allowed to enter the United Kingdom to receive hospital treatment, the immigration officer may limit the duration of such leave by requiring him on completion of that treatment to leave the United Kingdom, or leave within a specified period, in accordance with arrangements made for his repatriation⁸.

An immigration officer may board any ship, aircraft, through train or shuttle train for the purpose of exercising his functions under the Immigration Act 1971⁹ and may search it and anything on board it in order to satisfy himself whether there are people on board whom he may wish to examine¹⁰. This power extends to any vehicle taken off a ship or aircraft in which it has been brought to the United Kingdom¹¹, and to any vehicle which is in a control zone or which has arrived in or is seeking to leave the United Kingdom through the tunnel system¹².

Where a person arrives in the United Kingdom with a passport or other travel document bearing a stamp placed there by an immigration officer prior to his departure for, or during his journey to, the United Kingdom, which states that the person may enter the United Kingdom for an indefinite or a limited period, that person is deemed to have been given leave to enter in terms corresponding to those on the stamp¹³, and is not subject to examination under the Immigration Act 1971¹⁴ although he may be examined by an immigration officer for the purpose of establishing that he is such a person¹⁵. However, at any time within 24 hours of the person's arrival at the port at which he seeks to enter the United Kingdom or, if he has been examined as to his identity, within 24 hours of the conclusion of such examination, such deemed leave may be cancelled by an immigration officer by notice in writing refusing leave to enter¹⁶.

Otherwise, where a person has arrived in the United Kingdom with leave to enter which is in force but which was given to him before his arrival, he may be examined by an immigration officer for the purpose of establishing: (a) whether there has been such a change in the circumstances of his case, since that leave was given, that it should be cancelled; or (b) whether that leave was obtained as a result of false information given by him or his failure to disclose material facts; or (c) whether there are medical grounds on which that leave should be cancelled¹⁷. An immigration officer may also examine him for the purpose of establishing whether it would be conducive to the public good for that leave to be cancelled; and he may also be examined by a medical inspector or by any qualified person carrying out a test or examination required by a medical inspector¹⁸.

Where a person has been granted temporary admission subject to a restriction as to reporting to an immigration officer with a view to the conclusion of an examination, and fails to comply with that restriction, an immigration officer may direct that the person's examination is treated as concluded at that time, but the notice giving or refusing him leave to enter the United Kingdom need not be given within 24 hours after that time¹⁹.

Further, an immigration officer may examine any person who is embarking or seeking to embark in the United Kingdom, or leaving or seeking to leave the United Kingdom through the Channel Tunnel system, in order to establish whether he is a British citizen and, if he is not, to establish his identity²⁰.

In respect of a country which imposes restrictions or conditions on British citizens, British overseas territories citizens or British overseas citizens²¹ leaving or seeking to leave that country, provision may be made by Order in Council to prohibit a national of that country (provided he is not also a British citizen) from embarking in the United Kingdom, or leaving or

seeking to leave the United Kingdom through the tunnel system, or from doing so elsewhere than at a port of exit²², or to impose restrictions or conditions on him when embarking or about to embark in the United Kingdom, or leaving or seeking to leave²³. Provision may also be made by Order in Council to enable those who are not British citizens to be, in such cases as may be prescribed by the order, prohibited in the interests of safety from so leaving or embarking on a ship or aircraft specified or indicated in the prohibition²⁴. When any such orders are in force, an immigration officer may examine any person who is embarking or seeking to embark in the United Kingdom, or leaving or seeking to leave the United Kingdom through the Channel Tunnel system, for the purpose of determining whether any of the provisions of the order apply to him, and if so, whether any power conferred by the order should be exercised in relation to him and in what way²⁵.

If there is statistical evidence showing a pattern or trend of breach of the immigration laws by persons of a particular nationality or there is specific intelligence²⁶ which suggests that a significant number of persons of that nationality have breached or will attempt to breach the immigration laws, an immigration officer may: (i) subject a person of that nationality to a more rigorous examination than other persons in the same circumstances; (ii) exercise powers of: (A) examination; (B) search of the passenger, his baggage and his vehicle; (C) detention and examination of his documents²⁷; (D) detention pending his examination²⁸; (iii) decline to give notice of grant or refusal of leave to enter orally or by telecommunications²⁹; and (iv) impose a condition or restriction on his leave to enter the United Kingdom or his temporary admission to the United Kingdom³⁰.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Immigration Act 1971 s 4(2), Sch 2 para 2(1) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2; the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 46; and the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 8, Sch 5 Pt I para 1(b); and modified for the purposes of the security arrangements for the Channel Tunnel by art 7(1), Sch 4 para 1(3)(a), (11)(c); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7)). For the meaning of 'crew' see para 87 note 1 ante. For the meaning of 'ship' see para 87 note 2 ante. As to the meaning of 'aircraft' see para 87 note 3 ante. As to British citizens and citizenship see paras 8, 23-43 ante.

The Secretary of State may exercise these powers in relation to a person who has claimed asylum, or made a human rights allegation or has sought leave to enter outside the Immigration Rules: Immigration Act 1971 s 3A(7)-(9) (added by the Immigration and Asylum Act 1999 s 1); Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 3. As to the Secretary of State see para 2 ante. As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).

Transit passengers, members of the crew of the ship or aircraft and others not seeking to enter the United Kingdom may also be examined: Immigration Act 1971 Sch 2 para 2(1) (as so amended and modified). As to references to arrival by ship see para 93 note 1 ante.

There is no duty (only a power) to examine a person or to cross-examine him to reveal the true facts: *R v Secretary of State for the Home Department, ex p Kwadwo Saffu-Mensah* [1991] Imm AR 43; *R v Secretary of State for the Home Department, ex p Kumar* [1990] Imm AR 265 (whether or not there has been an examination depends upon the facts). It has been doubted that the provisions of the Police and Criminal Evidence Act 1984 apply to interviews conducted by immigration officers: see *R v Secretary of State for the Home Department, ex p Ogunlade* [1992] COD 46 (case involving a later interview on suspicion of illegal entry) but where a person other than a police officer is charged with the duty of investigating an offence, he must have regard to the Codes of Practice made under the Police and Criminal Evidence Act 1984 when conducting such an investigation: s 67(9). See also the Immigration (Pace Codes of Practice) Direction 2000. As to the Police and Criminal Evidence Act 1984 see CRIMINAL LAW, EVIDENCE AND PROCEDURE. An immigration officer is not obliged to caution a person seeking leave to enter the United Kingdom before conducting an interview: *Agbenowossi-Koffi v Secretary of State for the Home Department* [1995] Imm AR 524, CA. As to the requirement for an immigration officer to give an appropriate caution to a person who has obtained leave to enter the United Kingdom before conducting an interview see *Kim v Secretary of State for the Home Department* 2000 SLT 249, OH. An asylum-seeker does not have the right to instruct a private interpreter if a Home Office interpreter is present, but the discretion to exclude a private interpreter must be exercised properly: *R v Secretary of State for the Home Department, ex p Bostanci* [1999] Imm AR 411.

3 See the Immigration Act 1971 Sch 2 para 2(3) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1),

Sch 4 para 1(11)(e) (amended by SI 2001/3707); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7).

4 See the Immigration Act 1971 Sch 2 para 2(1A) (added for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(d) (itself substituted by SI 2001/1544); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). For the purposes of the exercise of the powers of immigration officers in a supplementary control zone outside the United Kingdom, persons seeking to board a through train are deemed to be seeking to enter the United Kingdom through the tunnel system: Channel Tunnel (International Arrangements) Order, SI 1993/1813, art 5A (added by SI 2001/1544). For the meaning of 'control zone' see para 93 note 5 ante. For the meaning of 'through train' see para 87 note 4 ante. For the meaning of 'tunnel system' see para 196 note 3 post.

5 Immigration Act 1971 Sch 2 para 2(2). The Secretary of State may exercise these powers in relation to a person who has claimed asylum, made a human rights allegation, or sought leave to enter outside the Immigration Rules: Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 3.

A passenger who intends to stay in the United Kingdom for more than six months should normally be referred to the medical inspector for examination, as should passengers mentioning health or medical treatment as a reason for their visit, or who appear not to be in good mental or physical health: see the Immigration Rules para 36. Doctors should be used only to determine whether there are medical reasons for refusing admission or making admission subject to a requirement of further examination or treatment (as to which see para 149 post). A medical inspector normally certifies that it is undesirable to admit a passenger found or suspected to be suffering from pulmonary tuberculosis, venereal disease, leprosy or trachoma, or if the passenger is heavily infested with lice, is bodily dirty or is suffering from scabies: see the *Immigration Directorates' Instructions* Chapter 1 (General provisions) Section 8 paragraph 2.1 (June 2001).

A person examined by an immigration officer or medical officer may be required in writing to submit to further examination, but a person who arrives as a transit passenger, or as a member of the crew of a ship or aircraft, or for the purpose of joining a ship or aircraft as a member of the crew, must not be prevented, by reason of such a requirement, from leaving by his intended ship or aircraft: Immigration Act 1971 Sch 2 para 2(3). It is not necessary for the immigration officer to serve a fresh notice requiring the person to submit to a further examination in order to validate each session of further examination, one such notice being adequate to cover a continuing process of examination: *R v Secretary of State for the Home Department, ex p V* [1988] Imm AR 561, DC. See also para 148 note 4 post.

6 Immigration Act 1971 s 26(1)(a). A person guilty of such an offence is punishable on summary conviction with a fine of not more than level 5 on the standard scale or with imprisonment for not more than six months, or with both: s 26(1). As to the standard scale see para 81 note 2 ante. The duty to submit to examination applies only to examination on entry (including further examination) and does not include questioning by the police or immigration service in any other circumstances: *Singh v Hammond* [1987] 1 All ER 829, [1987] 1 WLR 283, DC.

7 Immigration Act 1971 Sch 2 paras 12(1), 13(1)(a). As to removal if a person exceeds his leave see para 152 post.

8 Ibid Sch 2 para 13(1)(b), (c).

9 Ibid Sch 2 para 1(4) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(3)(b), (11)(a); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 4(1)). For the meaning of 'shuttle train' see para 87 note 5 ante.

10 Immigration Act 1971 Sch 2 para 1(5) (amended by the Channel Tunnel (International Arrangements) Order, SI 1993/1813, art 8, Sch 5 Pt I para 1(b); and modified for the purposes of the security arrangements for the Channel Tunnel by Sch 4 para 1(11)(a); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 4(1), 7).

11 Immigration Act 1971 Sch 2 para 1(5) (as amended and modified: see note 10 supra). The Secretary of State may also appoint medical inspectors, who must be fully qualified medical practitioners: Sch 2 para 1(2). They are subject to his instructions in the same way as immigration officers and, like immigration officers, are given power to board (but not to search) any ship or aircraft for the purpose of exercising their functions under the Immigration Act 1971: Sch 2 para 1(3), (4).

12 Ibid Sch 2 para 1(5) (as amended (see note 10 supra); and modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(b); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). As to requests by a person operating an international service for the exercise of controls in relation to passengers on a train engaged on such a service see the Channel Tunnel Act 1987 s 12.

13 Immigration Act 1988 s 8(1), (2). References to a person's arrival are to the first occasion on which he arrives after the time when the stamp in question was placed in his passport or travel document, being an occasion not later than seven days after that time: s 8(7). As from a day to be appointed, s 8 is repealed by the Immigration and Asylum Act 1999 s 169(1), (3), Sch 14 paras 83, 85, Sch 16. At the date at which this volume states the law no such day had been appointed.

14 *Ie* under the Immigration Act 1971 Sch 2 para 2: see the text and notes 1-5 *supra*.

15 Immigration Act 1988 s 8(4). As to the prospective repeal of this provision see note 13 *supra*. As to cancellation of deemed leave to enter see para 148 *post*.

16 *Ibid* s 8(5). As to the prospective repeal of this provision see note 13 *supra*. The reference in the text to 'a port at which he seeks to enter the United Kingdom' includes the terminal areas of the tunnel system at Cheriton, Folkestone and the service and maintenance area at the Old Dover Colliery site referred to in the Channel Tunnel Act 1987: see s 1(7)(b), (c).

17 Immigration Act 1971 Sch 2 para 2A(1), (2) (Sch 2 para 2A added by the Immigration and Asylum Act 1999 Sch 14 paras 43, 57). The provisions of the Immigration Act 1971 Sch 2 para 2A(1), (2) (as added) are applied to persons in a control zone in France or Belgium, or in a supplementary control zone in France: see Sch 2 para 2A(1A) (Sch 2 para 2A as so added; Sch 2 para 2A(1A) added by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(ea) (itself added by SI 2000/1775; and substituted by SI 2001/1544); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7).

18 Immigration Act 1971 Sch 2 para 2A(3), (4) (as added: see note 17 *supra*). A person so examined may be required, in writing, by the officer or inspector to submit to further examination, unless the person arrived as a transit passenger, as a member of the crew of a ship or aircraft, or for the purpose of joining a ship or aircraft as a member of the crew of a ship or aircraft, in which case he is not prevented from leaving by his intended ship or aircraft: Sch 2 para 2A(5), (6) (as so added; and Sch 2 para 2A(6) modified by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(eb) (itself added by SI 2000/1775; and amended by SI 2001/1544)). An immigration officer may by notice suspend leave to enter until the examination is completed or may, on the completion of any examination cancel leave to enter: Immigration Act 1971 Sch 2 para 2A(7), (8) (as so added). Such cancellation is treated for the purposes of the Immigration Act 1971 and the Immigration and Asylum Act 1999 Pt IV (ss 56-81) (as amended) as if leave had been refused at a time when the person had a current entry clearance: Immigration Act 1971 Sch 2 para 2A(9). See paras 173-195 *post* (appeals). As to entry clearance see para 96 *ante*.

19 *Ibid* Sch 2 para 21(3), (4) (Sch 2 para 21(3), (4) added by the Asylum and Immigration Act 1996 s 12(1), Sch 2 para 10; and amended by the Immigration and Asylum Act 1999 Sch 14 paras 43, 62, Sch 16). As to the requirement of notice within 24 hours see para 148 *post*.

20 Immigration Act 1971 Sch 2 para 3(1) (Sch 2 para 3 amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2; and the Channel Tunnel (International Arrangements) Order, SI 1993/1813, art 9, Sch 6 Pt I; and modified for the purposes of the security arrangements for the Channel Tunnel by Sch 4 para 1(11)(f); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). For the meaning of 'embark' see para 93 note 1 *ante*. As to the common travel area see para 94 *ante*.

21 As to British overseas territories citizens (formerly known as British dependent territories citizens): see paras 8, 44-57 *ante*. As to British overseas citizens and citizenship see paras 8, 58-62 *ante*.

22 For these purposes, the ports of exit are the seaports and hoverports of Dover, Felixstowe, Folkestone, Harwich, Hull, London, Newhaven, Plymouth, Portsmouth, Ramsgate, Sheerness, Southampton and Tyne; and the airports of Aberdeen, Belfast, Birmingham, Bournemouth (Hurn), Bristol, Cardiff (Wales), East Midlands, Edinburgh, Gatwick-London, Glasgow, Heathrow-London, Leeds/Bradford, Liverpool, Luton, Manchester, Newcastle, Norwich, Prestwick, Southampton, Southend, Stansted-London, and Tees-side: Immigration Act 1971 s 33(3); Immigration (Ports of Entry) Order 1987, SI 1987/177, art 2, Schedule.

23 Immigration Act 1971 s 3(7), (7A) (s 3(7) amended by the British Nationality Act 1981 Sch 4 para 2; and the Immigration Act 1971 s 3(7A) added for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(1), (2)(b); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). It is an offence to embark in contravention of such a restriction: Immigration Act 1971 s 24(1)(g).

24 Immigration Act 1971 s 3(7) (as amended: see note 23 *supra*), s 3(7A) (as added: see note 23 *supra*). At the date at which this volume states the law no such order had been made.

25 *Ibid* Sch 2 para 3(2) (as amended and modified: see note 20 *supra*).

26 The intelligence must have been received and processed in accordance with the Immigration and Nationality Directorate Code of Practice for the recording and dissemination of intelligence material. The Immigration and Nationality Directorate Code of Practice is a code of practice for employers produced in leaflet form by the Home Office to show employers how they can avoid race discrimination in recruitment while making sure that the staff they take on have a right to work in the United Kingdom.

27 Ie under the Immigration Act 1971 Sch 2 para 4(4).

28 Ie under ibid Sch 2 para 16(1): see para 156 post.

29 Ie under ibid ss 3(1) (as amended), 4(1) (as amended) (see para 86 ante).

30 See the Race Relations (Immigration and Asylum) Authorisation 2001; and paras 93 note 40, 140 note 12 ante. The reference in the text to the imposition of a condition or restriction is to one so imposed under the Immigration Act 1971 s 3(1)(c) (as substituted) (see para 86 ante) or Sch 2 para 21(2) (as amended) (see para 188 post).

UPDATE

143 Power to examine

NOTES--SI 2004/1405 art 7 amended: SI 2007/3579.

TEXT AND NOTES 1-5--See also Immigration, Asylum and Nationality Act 2006 ss 40, 41 and PARA 143A.

NOTE 2--Where an asylum seeker is not accompanied by a representative or interpreter at an interview with an immigration officer, the interview should be tape-recorded: *R (on the application of Dirshe) v Secretary of State for the Home Department* [2005] EWCA Civ 421, [2005] 1 WLR 2685.

NOTE 4--A fast-track asylum scheme is not inherently unfair so long as it operates flexibly and on a case-by-case basis: *R (on the application of Refugee Legal Centre) v Secretary of State for the Home Department* [2004] EWCA Civ 1481, [2005] 1 WLR 2219.

NOTE 5--If an immigration officer acting under the 1971 Act Sch 2 has brought a person to the attention of a medical inspector appointed under Sch 2 para 1(2) (see NOTE 11), or a person working under the direction of a medical inspector so appointed, a medical inspector may disclose to a health service body (1) the name of a person to whom this provision applies; (2) his place of residence in the United Kingdom; (3) his age; (4) the language which he speaks; (5) the nature of any disease with which the inspector thinks the person may be infected; (6) relevant details of the person's medical history; (7) the grounds for an opinion mentioned in head (5) including the result of any test or examination which has been carried out; and (8) the inspector's opinion about action which the health service body should take: Nationality, Immigration and Asylum Act 2002 s 133(1), (2). Disclosure may be made only if the medical inspector thinks it necessary for the purpose of preventative medicine, medical diagnosis, the provision of care or treatment, or the management of health care services: s 133(3). For these purposes 'health service body' in relation to a person means a body which carries out functions in an area which includes his place of residence and which is: (a) in relation to England, a primary care trust established under the National Health Service Act 2006 s 18, a National Health Service trust established under the National Health Service Act 2006 s 25 or the National Health Service (Wales) Act 2006 s 18, an NHS foundation trust, a strategic health authority established under the National Health Service Act 2006 s 13, a special health authority established under the National Health Service Act 2006 s 28 or the National Health Service (Wales) Act 2006 s 22, or the Health Protection Agency (see HEALTH SERVICES vol 54 (2008) PARA 213); and (b) in relation to Wales, a local health board established under the National Health Service

(Wales) Act 2006 s 11, a National Health Service trust established under the National Health Service Act 2006 s 25 or the National Health Service (Wales) Act 2006 s 18, or the Health Protection Agency: 2002 Act s 133(4)(a), (b) (s 133(4)(a) amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 4 para 128, Sch 13 para 12(a), Sch 14 Pt 7; the Health Protection Agency Act 2004 Sch 3 para 17(2); and the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 228(a)-(d); 2002 Act s 133(4)(b) amended by the 2003 Act Sch 13 para 12(b), Sch 14 Pt 7; the Health Protection Agency Act 2004 Sch 3 para 17(3); and the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 228(e), (f)).

A person is not a person who may be required to submit to further examination within the meaning of the 1971 Act Sch 2 para 2(3) unless and until a notice in writing is given to him so to submit: *S v Secretary of State for the Home Department (sub nom R (on the application of GG) v Secretary of State for the Home Department)* [2006] EWCA Civ 1157, [2006] All ER (D) 30 (Aug).

NOTE 11--The Secretary of State may direct that his function of appointing medical inspectors under the 1971 Act Sch 2 para 1(2) is also to be exercisable by such persons specified in the direction who exercise functions relating to health in England or Wales: Sch 2 para 1(2A) (added by the Health Protection Agency Act 2004 Sch 3 para 3).

NOTES 17, 18--Where the person's leave to enter derives, by virtue of the 1971 Act s 3A(3) (see PARA 96), from an entry clearance, he may also be examined by an immigration officer for the purpose of establishing whether the leave should be cancelled on the grounds that the person's purpose in arriving in the United Kingdom is different from the purpose specified in the entry clearance: Sch 2 para 2A(2A) (added by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 18).

NOTE 18--Reference to the Immigration and Asylum Act 1999 Pt IV (ss 56-81) is now to the 2002 Act Pt 5 (ss 81-117) (immigration and asylum appeals): 1971 Act Sch 2 para 2A(9) (amended by the 2002 Act Sch 7 para 2).

TEXT AND NOTE 20--In 1971 Act Sch 2 para 3(1) for the words 'and, if he is not, to establish his identity' substitute 'and, if he is not a British citizen, for the purpose of establishing (1) his identity; (2) whether he entered the United Kingdom lawfully; (3) whether he has complied with any conditions of leave to enter or remain in the United Kingdom; (4) whether his return to the United Kingdom is prohibited or restricted: Immigration, Asylum and Nationality Act 2006 s 42(2). An immigration officer who examines a person under the 1971 Act Sch 2 para 3(1) may require him, by notice in writing, to submit to further examination for a purpose specified in that provision: Sch 2 para 3(1A) (added by 2006 Act s 42(2)).

NOTE 27--1971 Act Sch 2 para 4(4) substituted: Immigration, Asylum and Nationality Act 2006 s 27. See further PARA 144.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(ii) Powers and Duties in relation to Arrivals/143A. Searches.

143A. Searches.

1. Contracting out

An authorised¹ person may, in accordance with arrangements made under the following provisions², search a searchable³ ship, aircraft, vehicle or other thing for the purpose of satisfying himself whether there are individuals whom an immigration officer might wish to examine⁴. The Secretary of State may authorise a specified class of constable for the purpose of these provisions⁵. The Secretary of State may, with the consent of the Commissioners for Her Majesty's Revenue and Customs, authorise a specified class of officers of Revenue and Customs for the purpose of these provisions⁶. The Secretary of State may authorise a person other than a constable or officer of Revenue and Customs for the purpose of these provisions only if (1) the person applies to be authorised, and (2) the Secretary of State thinks that the person is (a) fit and proper for the purpose, and (b) suitably trained⁷. The Secretary of State (i) may make arrangements for the exercise by authorised constables of the above powers⁸, (ii) may make arrangements with the Commissioners for Her Majesty's Revenue and Customs for the exercise by authorised officers of Revenue and Customs of the above powers⁹, and (iii) may make arrangements with one or more persons for the exercise by authorised persons other than constables and officers of Revenue and Customs of the above powers¹⁰. Where in the course of a search under these provisions an authorised person discovers an individual whom he thinks an immigration officer might wish to examine¹¹, the authorised person may (A) search the individual for the purpose of discovering whether he has with him anything of a kind that might be used (aa) by him to cause physical harm to himself or another, (bb) by him to assist his escape from detention, or (cc) to establish information about his identity, nationality or citizenship or about his journey; (B) retain, and as soon as is reasonably practicable deliver to an immigration officer, anything of a kind described in head (A) above found on a search under that head; (C) detain the individual, for a period which is as short as is reasonably necessary and which does not exceed three hours, pending the arrival of an immigration officer to whom the individual is to be delivered; (D) take the individual, as speedily as is reasonably practicable, to a place for the purpose of delivering him to an immigration officer there; (E) use reasonable force for the purpose of doing anything under heads (A) to (D) above¹².

Supplemental provision is made¹³.

1 For these purposes 'authorised' means authorised for the purpose of the Immigration, Asylum and Nationality Act 2006 s 40 by the Secretary of State: s 40(2)(a).

2 Ie ibid s 40.

3 For these purposes a ship, aircraft, vehicle or other thing is 'searchable' if an immigration officer could search it under the Immigration Act 1971 Sch 2 para 1(5): 2006 Act s 40(2)(b).

4 Under the Immigration Act 1971 Sch 2 para 2 (control of entry: administrative provisions): 2006 Act s 40(1).

5 Ibid s 40(3).

6 Ibid s 40(4).

7 Ibid s 40(5).

8 Ie the powers under ibid s 40(1).

9 Ie the powers under ibid s 40(1).

10 Ie the powers under ibid s 40(1): s 40(6).

11 Under the Immigration Act 1971 Sch 2 para 2.

12 2006 Act s 40(7). Despite the generality of s 40(7) (1) an individual searched under s 40(7) may not be required to remove clothing other than an outer coat, a jacket or a glove (but he may be required to open his mouth), and (2) an item may not be retained under head (B) in the text if it is subject to legal privilege (a) in relation to a search carried out in England and Wales, within the meaning of the Police and Criminal Evidence

Act 1984, and (b) in relation to a search carried out in Northern Ireland, within the meaning of the Police and Criminal Evidence (Northern Ireland) Order 1989, SI 1989/1341: 2006 Act s 40(8).

¹³ See *ibid* s 41; and PARA 143A.2.

2. Supplemental

Arrangements¹ must include provision for the appointment of a Crown servant to (1) monitor the exercise of powers² by authorised persons (other than constables or officers of Revenue and Customs), (2) inspect from time to time the way in which the powers are being exercised by authorised persons (other than constables or officers of Revenue and Customs), and (3) investigate and report to the Secretary of State about any allegation made against an authorised person (other than a constable or officer of Revenue and Customs) in respect of anything done or not done in the purported exercise of a power³. The authorisation⁴ of a constable or officer of Revenue and Customs or of a class of constable or officer of Revenue and Customs (a) may be revoked, and (b) has effect, unless revoked, for such period as must be specified (whether by reference to dates or otherwise) in the authorisation⁵. The authorisation of a person other than a constable or officer of Revenue and Customs⁶ (i) may be subject to conditions, (ii) may be suspended or revoked by the Secretary of State by notice in writing to the authorised person, and (iii) has effect, unless suspended or revoked, for such period as must be specified (whether by reference to dates or otherwise) in the authorisation⁷. A class may be specified⁸ by reference to (A) named individuals, (B) the functions being exercised by a person, (C) the location or circumstances in which a person is exercising functions, or (D) any other matter⁹. An individual or article delivered to an immigration officer¹⁰ must be treated as if discovered by the immigration officer on a search¹¹. A person commits an offence if he (aa) absconds from detention¹², (bb) absconds while being taken to a place¹³ or having been taken to a place but before being delivered to an immigration officer, (cc) obstructs an authorised person in the exercise of a power¹⁴, or (dd) assaults an authorised person who is exercising a power¹⁵.

1 Ie under the Immigration, Asylum and Nationality Act 2006 s 40(6)(c): see PARA 143A.1 head (iii).

2 Ie under *ibid* s 40.

3 Ibid s 41(1), referring to a power under s 40.

4 Ie for the purpose of *ibid* s 40.

5 Ibid s 41(2).

6 Ie for the purpose of *ibid* s 40.

7 Ibid s 41(3).

8 Ie for the purpose of *ibid* s 40(3) or (4).

9 Ibid s 41(4).

10 Ie under *ibid* s 40.

11 Ibid s 41(5), referring to a search under the Immigration Act 1971 Sch 2 para 2.

12 Ie under the 2006 Act s 40(7)(c): see PARA 143A.1 head (c).

13 Ie under *ibid* s 40(7)(d): see PARA 143A.1 head (d).

14 Ie under *ibid* s 40.

15 Ibid s 41(6), referring to a power under s 40. But a person does not commit an offence under s 41(6) by doing or failing to do anything in respect of an authorised person who is not readily identifiable (1) as a

constable or officer of Revenue and Customs, or (2) as an authorised person (whether by means of a uniform or badge or otherwise): s 41(7). A person guilty of an offence under s 41(6) is liable on summary conviction to (a) imprisonment for a term not exceeding 51 weeks, in the case of a conviction in England and Wales, or six months, in the case of a conviction in Northern Ireland, (b) a fine not exceeding level 5 on the standard scale, or (c) both: s 41(8). As to the standard scale see PARA 81. In relation to a conviction occurring before the commencement of the Criminal Justice Act 2003 s 281(5) (51 week maximum term of sentences) the reference in head (a) to 51 weeks must be treated as a reference to six months: 2006 Act s 41(9).

An act or omission which constitutes an offence under s 41 is also an offence if it takes place in a control zone in France: Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003, SI 2003/2818, art 12(4A) (added by SI 2006/2908).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(ii) Powers and Duties in relation to Arrivals/144. Power to require information.

144. Power to require information.

A person being examined by an immigration officer or a medical inspector¹ is under a duty to furnish all such relevant information in his possession as is required by the person carrying out the examination². This duty includes: (1) producing either a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship; and (2) declaring whether or not he is carrying or conveying, or has carried or conveyed, documents of any relevant description³ specified by the immigration officer, and producing any such documents which he is carrying or conveying⁴.

A person is guilty of an offence if, without reasonable excuse, he refuses or fails to furnish or produce any information in his possession, or any documents in his possession or control, which he is on examination required to furnish or produce or if on any such examination or otherwise he makes or causes to be made to an immigration officer or other person lawfully acting in the execution of a relevant enactment a return, statement or representation which he knows to be false or does not believe to be true⁵.

An immigration officer or a person acting under his direction may search any person or any baggage belonging to or under the control of any person who has been asked to declare documents of any relevant description⁶, with a view to ascertaining whether or not he is in fact carrying or conveying or has carried or conveyed documents of the specified description, but no woman or girl is to be searched except by a woman⁷. In addition, any vehicle belonging to or under the control of the person and any ship, aircraft or vehicle in which he arrived in the United Kingdom may be searched⁸. An immigration officer may use reasonable force, if necessary, when conducting any such search⁹.

An immigration officer may examine any documents so produced or found and may for that purpose detain them for any period not exceeding seven days, but if the immigration officer is of the opinion that any such document may be needed in connection with proceedings on an appeal under the Immigration Act 1971 or for an offence, he may detain the document until he is satisfied that it will not be so needed¹⁰.

The Secretary of State may, by order made by statutory instrument, make provision for: (a) requiring passengers disembarking or embarking in the United Kingdom or entering or leaving through the tunnel system¹¹, or any class of such passengers, to produce to an immigration officer, if so required, landing or embarkation cards in such form as may be specified; and (b) requiring owners or agents of ships or aircraft¹² or persons operating international train services through the Channel Tunnel¹³ to supply such cards to passengers¹⁴.

1 le under the Immigration Act 1971 s 4, Sch 2 para 2 (as amended), Sch 2 para 2A (as added) or Sch 2 para 3 (as amended): see para 143 ante.

2 Ibid Sch 2 para 4(1) (amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 58). The Secretary of State may require production of these documents or information from a person who has claimed asylum, made a human rights allegation, or sought leave to enter outside the Immigration Rules: Immigration Act 1971 s 3A(7)-(9) (added by the Immigration and Asylum Act 1999 s 1); Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 3. As to the Secretary of State see para 2 ante. As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).

3 For these purposes, 'relevant description' means any description appearing to the immigration officer to be relevant for the purposes of the examination: Immigration Act 1971 Sch 2 para 4(2).

4 Ibid Sch 2 para 4(2) (amended by the Asylum and Immigration Act 1996 s 12(2), Sch 2 para 5(1); and the Immigration and Asylum Act 1999 Sch 14 paras 43, 58). An immigration officer may detain any passport or other document so produced until the person concerned is given leave to enter the United Kingdom or is about to depart or be removed following refusal of leave: Immigration Act 1971 Sch 2 para 4(2A) (added by the Immigration Act 1988 s 10, Schedule paras 6, 10). As to the meaning of 'United Kingdom' see para 5 note 1 ante.

5 Immigration Act 1971 s 26(1)(b), (c) (s 26(1)(c) amended by the Immigration and Asylum Act 1999 s 30). A person guilty of such an offence is punishable on summary conviction with a fine of not more than level 5 on the standard scale or with imprisonment for not more than six months, or with both: Immigration Act 1971 s 26(1). As to the standard scale see para 81 note 2 ante.

6 le under ibid Sch 2 para 4(2)(b): see the text and notes 3-4 supra.

7 Ibid Sch 2 para 4(3) (amended by the Asylum and Immigration Act 1996 s 12(1), Sch 2 para 5). Provided those procedures are followed, there is no justification in law for excluding consideration of the evidence obtained by such a search: *Immigration Officer, Heathrow v Mirani* [1990] Imm AR 132, IAT.

8 Immigration Act 1971 Sch 2 para 4(3) (as amended: see note 7 supra).

9 Immigration and Asylum Act 1999 s 146(1).

10 Immigration Act 1971 Sch 2 para 4(4). As to appeals see para 173 et seq post. As to offences generally see para 196 et seq post.

11 For the meaning of 'tunnel system' see para 196 note 3 post.

12 As to the meaning of 'aircraft' see para 87 note 3 ante.

13 See the Channel Tunnel Act 1987 ss 11, 12.

14 Immigration Act 1971 Sch 2 para 5 (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(g); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). The power to make an order includes the power to revoke or vary it: Immigration Act 1971 s 32(1). As to proof of an order see para 86 note 15 ante.

Every person aged 16 or over who is not a British citizen (ie does not have the right of abode in the United Kingdom: see paras 14, 85 ante) who disembarks or embarks in the United Kingdom or leaves or boards in the United Kingdom a train engaged on an international service must, if required by an immigration officer, produce a landing or embarkation card in the appropriate form and duly completed, and forms must be supplied for the purpose by the owner or agents of the ship or aircraft concerned or the operator of the international service: Immigration (Landing and Embarkation Cards) Order 1975, SI 1975/65, art 4 (amended by SI 1993/1813). For the meanings of 'disembark' and 'embark' see para 93 note 1 ante. As to the meaning of 'ship' see para 87 note 2 ante. For the meaning of 'international service' see para 87 note 1 ante. As to British citizens and citizenship see paras 8, 23-43 ante. But these requirements do not generally apply to persons coming from places in the common travel area, except those travelling from outside the common travel area via the Republic of Ireland en route to the United Kingdom: Immigration (Landing and Embarkation Cards) Order 1975, SI 1975/65, art 5. As to the 'common travel area' see para 94 ante.

UPDATE

144 Power to require information

NOTE 4--Immigration Act 1971 Sch 2 para 4(2A) repealed: Immigration, Asylum and Nationality Act 2006 s 27(2), Sch 3.

TEXT AND NOTE 10--Where a passport or other document is produced or found in accordance with the 1971 Act Sch 2 para 4 an immigration officer may examine it and detain it (1) for the purpose of examining it, for a period not exceeding seven days; (2) for any purpose, until the person to whom the document relates is given leave to enter the United Kingdom or is about to depart or be removed following refusal of leave or until it is decided that the person does not require leave to enter; (3) after a time described in head (2), while the immigration officer thinks that the document may be required in connection with proceedings in respect of an appeal under the Immigration Acts or in respect of an offence: Sch 2 para 4(4) (substituted by Immigration, Asylum and Nationality Act 2006 s 27(1)). For the purpose of ascertaining that a passport or other document produced or found in accordance with the 1971 Act Sch 2 para 4 relates to a person examined under Sch 2 para 2, 2A or 3, the person carrying out the examination may require the person being examined to provide information (whether or not by submitting to a process by means of which information is obtained or recorded) about his external physical characteristics (which may include, in particular, fingerprints or features of the iris or any other part of the eye): Sch 2 para 4(5) (added by 2006 Act s 27(1)).

NOTE 14--SI 2004/1405 art 7 amended: SI 2007/3579.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(ii) Powers and Duties in relation to Arrivals/145. Restrictions on embarkation and disembarkation of passengers.

145. Restrictions on embarkation and disembarkation of passengers.

The owners or agents of a ship¹ or aircraft² employed to carry passengers for reward may not, without the approval of the Secretary of State³, arrange for it to call at a port in the United Kingdom⁴ other than a port of entry⁵ for the purpose of disembarking⁶ passengers, if any of the passengers on board may not enter the United Kingdom without leave, or for the purpose of embarking passengers unless the owners or agents have reasonable cause to believe them all to be British citizens⁷. Persons operating international services may not without the approval of the Secretary of State arrange for any through train to stop for the purpose of enabling passengers to leave it except at a terminal control point or an international station⁸.

The captain⁹ of a ship or aircraft arriving in the United Kingdom: (1) must take such steps as may be necessary to secure that persons on board do not disembark there unless before disembarking from the ship or aircraft they have been examined by an immigration officer¹⁰, or they disembark in accordance with arrangements approved by an immigration officer¹¹, or they are members of the crew¹² who may lawfully enter the United Kingdom without leave¹³; and (2) where the examination of persons on board is to be carried out on the ship or aircraft, must take such steps as may be necessary to secure that those to be examined are presented in an orderly manner¹⁴. The train manager of a through train or shuttle train¹⁵ arriving in the United Kingdom must take such steps as may be necessary to secure that persons, other than members of the crew who may lawfully enter the United Kingdom in that capacity, do not leave the train except in accordance with any arrangements approved by an immigration officer¹⁶, and where persons are to be examined by an immigration officer on the train, must take such steps as may be necessary to secure that they are ready for examination¹⁷.

The Secretary of State may by order made by statutory instrument make provision for: (a) requiring captains of ships or aircraft arriving in the United Kingdom or of such of them as arrive from or by way of countries or places specified in the order, or for train managers of through trains or shuttle trains arriving in the United Kingdom, to furnish to immigration officers: (i) in the case of a ship or aircraft or through train, a passenger list showing the names and nationality or citizenship of passengers arriving on board the ship or aircraft, or arriving in the train; (ii) particulars of members of the crew of the ship, aircraft or train; and (b) enabling an immigration officer to dispense with the furnishing of any such list or particulars¹⁸.

The Secretary of State may give written notice to the owners or agents of any ship or aircraft designating control areas for the embarkation or disembarkation of passengers in any port in the United Kingdom and specifying the conditions and restrictions, if any, to be observed in any control area, and the owners or agents must then take all reasonable steps to secure that their passengers do not embark or disembark outside the control area and that any conditions or restrictions notified to them are observed¹⁹. The Secretary of State may also give to any persons concerned with the management of a port in the United Kingdom written notice designating control areas in the port and specifying conditions or restrictions to be observed in any control area, and any such person must take reasonable steps to secure that any conditions or restrictions as notified to him are observed²⁰.

1 As to the meaning of 'ship' see para 87 note 2 ante.

2 As to the meaning of 'aircraft' see para 87 note 3 ante.

3 As to the Secretary of State see para 2 ante.

4 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

5 For these purposes, the ports of entry are the seaports and hoverports of Dover, Felixstowe, Folkestone, Harwich, Hull, London, Newhaven, Plymouth, Portsmouth, Ramsgate, Sheerness, Southampton and Tyne; and the airports of Aberdeen, Belfast, Birmingham, Bournemouth (Hurn), Bristol, Cardiff (Wales), East Midlands, Edinburgh, Gatwick-London, Glasgow, Heathrow-London, Leeds/Bradford, Liverpool, Luton, Manchester, Newcastle, Norwich, Prestwick, Southampton, Southend, Stansted-London, and Tees-side: Immigration Act 1971 s 33(3); Immigration (Ports of Entry) Order 1987, SI 1987/177, art 2, Schedule.

6 For the meaning of 'disembark' see para 93 note 1 ante.

7 Immigration Act 1971 Sch 2 para 26(1) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2; and the Immigration and Asylum Act 1999 s 169(1), (3), Sch 14 paras 43, 64(1), (2), Sch 16). The Secretary of State has the power to disapply the Immigration Act 1971 Sch 2 para 26(1) (as amended) by an order subject to annulment by either House of Parliament: see Sch 2 para 26(1A), (3A) (added by the Immigration and Asylum Act 1999 Sch 14 paras 43, 64(1), (3), (4)). For the meaning of 'embark' see para 93 note 1 ante. As to British citizens and citizenship see paras 8, 23-43 ante.

8 Immigration Act 1971 Sch 2 para 26(1) (Sch 2 para 26 substituted for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(r) (itself amended by SI 1994/1405); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). The Secretary of State may from time to time give written notice to persons operating international services designating all or any through trains as control areas while they are within any area in the United Kingdom specified in the notice or while they constitute a control zone: Immigration Act 1971 Sch 2 para 26(2) (as so substituted). The Secretary of State may from time to time give written notice designating a control area: (1) to the Concessionaires as respects any part of the tunnel system in the United Kingdom or of a control zone within the tunnel system in France; or (2) to any occupier or person concerned with the management of a terminal control point in the United Kingdom or of an international station: Sch 2 para 26(3) (as so substituted). A notice under these provisions may specify conditions and restrictions to be observed in a control area, and any person to whom such a notice is given must take all reasonable steps to secure that any such conditions or restrictions are observed: Sch 2 para 26(4) (as so substituted). For the meaning of 'control zone' see para 93 note 5 ante. For the meaning of 'through train' see para 87 note 4 ante. For the meaning of 'tunnel system' see para 196 note 3 post. For the meaning of 'international service' see para 87 note 1 ante.

9 For the meaning of 'captain' see para 87 note 1 ante.

- 10 As to examination by an immigration officer see para 143 ante.
- 11 The arrangements made in accordance with the Immigration Act 1971 Sch 2 para 26(2): see the text and note 19 infra.
- 12 For the meaning of 'crew' see para 87 note 1 ante.
- 13 Immigration Act 1971 s 4(2), Sch 2 para 27(1)(a). The reference in the text to members of the crew who may lawfully enter the United Kingdom without leave is a reference to those who may do so by virtue of s 8(1): see para 87 ante.
- 14 Ibid Sch 2 para 27(1).
- 15 For the meaning of 'shuttle train' see para 87 note 5 ante.
- 16 Immigration Act 1971 Sch 2 para 27(1)(a) (Sch 2 para 27 substituted for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(r); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7).
- 17 Immigration Act 1971 Sch 2 para 27(1)(b) (as substituted: see note 16 supra).
- 18 Ibid Sch 2 para 27(2); Sch 2 para 27(2) (as substituted: see note 16 supra). As to the order that has been made see the Immigration (Particulars of Passengers and Crew) Order 1972, SI 1972/1667 (as amended); and para 146 post.
- 19 Immigration Act 1971 Sch 2 para 26(2).
- 20 Ibid Sch 2 para 26(3). As to proof of notices given by the Secretary of State see para 86 note 15 ante.

UPDATE

145 Restrictions on embarkation and disembarkation of passengers

NOTES 8, 16--SI 2004/1405 art 7 amended: SI 2007/3579.

TEXT AND NOTES 16-18--SI 1993/1813 Sch 4 para 1(11)(r) (on the substitution of the Immigration Act 1971 Sch 2 para 27 for the purposes of the security arrangements for the Channel Tunnel) amended: SI 2007/3579.

TEXT AND NOTE 18--The Secretary of State may by order require, or enable an immigration officer to require, a responsible person in respect of a ship or aircraft to supply (1) a passenger list showing the names and nationality or citizenship of passengers arriving or leaving on board the ship or aircraft; (2) particulars of members of the crew of the ship or aircraft: 1971 Act Sch 2 para 27(2) (Sch 2 para 27(2)-(5) substituted by Immigration, Asylum and Nationality Act 2006 s 31(2)). An order under the 1971 Act Sch 2 para 27(2) may relate (a) to all ships or aircraft arriving or expected to arrive in the United Kingdom; (b) to all ships or aircraft leaving or expected to leave the United Kingdom; (c) to ships or aircraft arriving or expected to arrive in the United Kingdom from or by way of a specified country; (d) to ships or aircraft leaving or expected to leave the United Kingdom to travel to or by way of a specified country; (e) to specified ships or specified aircraft: Sch 2 para 27(3) (as substituted). For the purposes of Sch 2 para 27(2) the following are responsible persons in respect of a ship or aircraft: (i) the owner or agent, and (ii) the captain: Sch 2 para 27(4) (as substituted). An order under Sch 2 para 27(2) (A) may specify the time at which or period during which information is to be provided, (B) may specify the form and manner in which information is to be provided, (C) must be made by statutory instrument, and (D) is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 2 para 27(5) (as substituted). See the Immigration and Police (Passenger, Crew and Service Information) Order 2008, SI 2008/5.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(ii) Powers and Duties in relation to Arrivals/146. Duty to give particulars of passengers and crew.

146. Duty to give particulars of passengers and crew.

The Secretary of State¹, has by order made by statutory instrument made provision requiring immigration officers to be furnished with particulars of passengers and crew². Where a ship³ arrives in the United Kingdom⁴ from or after calling at a place outside the common travel area⁵, or an aircraft⁶ arrives there from or after calling at a place outside the United Kingdom, the Channel Islands or the Isle of Man, and where through trains and shuttle trains arrive in the United Kingdom⁷, the captain of the ship or aircraft or manager of the through train, if so required by an immigration officer, must: (1) furnish him with a list of the names and nationalities of all passengers arriving on the ship or aircraft or through train, as the case may be⁸; (2) in the case of a ship, furnish to an immigration officer within 12 hours of the arrival of the ship, a form⁹ containing particulars of all members of the crew arriving on the ship¹⁰; (3) in the case of an aircraft, through train or shuttle train, if so required by an immigration officer, furnish to that officer a list of the names, dates of birth and nationalities of all members of the crew arriving on the aircraft or train as soon as practicable after its arrival¹¹.

An immigration officer may by notice to the captain of a ship or aircraft or train manager dispense with the required information in respect of all crew members or in respect of such classes of persons as he may specify¹². Any passenger of a ship or aircraft or through train must furnish to the captain or train manager any information required by him to enable him to comply with the provisions described above¹³.

1 As to the Secretary of State see para 2 ante.

2 See the Immigration (Particulars of Passengers and Crew) Order 1972, SI 1972/1667: and the text and notes 3-13 infra.

3 As to the meaning of 'ship' see para 87 note 2 ante.

4 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

5 As to the common travel area see para 94 ante.

6 As to the meaning of 'aircraft' see para 87 note 3 ante.

7 Immigration (Particulars of Passengers and Crew) Order 1972, SI 1972/1667, art 3(1A) (added by SI 1993/1813). For the meaning of 'through train' see para 87 note 4 ante. For the meaning of 'shuttle train' see para 87 note 5 ante.

8 Immigration (Particulars of Passengers and Crew) Order 1972, SI 1972/1667, art 3(2)(a), (3A)(b) (art 3(3A) added by SI 1993/1813). As to the form to be used see the Immigration (Particulars of Passengers and Crew) Order 1972, SI 1972/1667, art 3(2), Schedule (substituted by SI 1975/980). Where an aircraft started its flight in the Republic of Ireland, the captain is required to list only those passengers who, not being citizens of the Republic, entered the Republic in the course of a journey to the United Kingdom which began outside the common travel area and who were not given leave to land in the Republic in accordance with the law in force there: Immigration (Particulars of Passengers and Crew) Order 1972, SI 1972/1667, art 3(3)(a).

9 I.e. the form set out in *ibid* art 3, Schedule.

10 *Ibid* art 3(2)(b)(i).

11 *Ibid* art 3(2)(b)(ii), (3A)(c) (art 3(3A) as added: see note 8 supra). This provision does not apply to an aircraft which started its flight in the Republic of Ireland: see art 3(3)(b).

12 Ibid art 3(4).

13 Ibid art 3(5). As to the power to revoke or vary an order see the Immigration Act 1971 32(1). As to proof of orders given by the Secretary of State see para 86 note 15 ante.

UPDATE

146 Duty to give particulars of passengers and crew

TEXT AND NOTES--For police powers with respect to passenger and crew information and freight information see PARA 146A.

SI 1972/1667 replaced by the Immigration and Police (Passenger, Crew and Service Information) Order 2008, SI 2008/5, which, in relation to ships, aircraft and trains arriving or expected to arrive in, or leaving or expected to leave the United Kingdom, empowers an immigration officer to require passenger lists and the specified particulars of crew (regs 3, 4, Sch 1); empowers an immigration officer to request specified information relating to crew, passengers and the voyage, flight or international service (reg 5, Schs 1, 2); and empowers a police constable to request specified information on crew, passengers and the voyage, flight or international service (regs 6, 7, Schs 3, 4).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(ii) Powers and Duties in relation to Arrivals/146A. Passenger and crew information and freight information: police powers

146A. Passenger and crew information and freight information: police powers

1. Passenger and crew information

The following provisions¹ apply to ships and aircraft which are (1) arriving, or expected to arrive, in the United Kingdom, or (2) leaving, or expected to leave, the United Kingdom². The owner or agent of a ship or aircraft must comply with any requirement imposed by a constable of the rank of superintendent or above to provide passenger or service information³. A passenger or member of crew must provide to the owner or agent of a ship or aircraft any information that he requires for the purpose of complying with a requirement imposed by virtue of the above provision⁴. A constable may impose such a requirement only if he thinks it necessary for police purposes⁵. A requirement (a) must be in writing, (b) may apply generally or only to one or more specified ships or aircraft, (c) must specify a period, not exceeding six months and beginning with the date on which it is imposed, during which it has effect, (d) must state (i) the information required, and (ii) the date or time by which it is to be provided⁶.

Provision is made as to the penalties that can be applied for non-compliance with a requirement to provide information under the above provisions⁷.

1 I.e. the Immigration, Asylum and Nationality Act 2006 s 32. Sections 32 and 34 are modified by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 3A (added by SI 2007/3579) so that they apply in relation to trains arriving in and departing from the United Kingdom via the Channel Tunnel.

2 2006 Act s 32(1).

3 Ibid s 32(2). 'Passenger or service information' means information which is of a kind specified by order of the Secretary of State and which relates to (1) passengers, (2) members of crew, or (3) a voyage or flight: s 32(5)(a). The Secretary of State may make an order specifying a kind of information under s 32(5)(a) only if satisfied that the nature of the information is such that there are likely to be circumstances in which it can be required under s 32(2) without breaching Convention rights (within the meaning of the Human Rights Act 1998): 2006 Act s 32(7). An order under s 32(5)(a) (a) may apply generally or only to specified cases or circumstances, (b) may make different provision for different cases or circumstances, (c) may specify the form and manner in which information is to be provided, (d) must be made by statutory instrument, and (e) is subject to annulment in pursuance of a resolution of either House of Parliament: s 32(8). See the Immigration and Police (Passenger, Crew and Service Information) Order 2008, SI 2008/5.

4 2006 Act s 32(3), referring to s 32(2).

5 Ibid s 32(4). 'Police purposes' has the meaning given by the Immigration and Asylum Act 1999 s 21(3) (see PARA 142): 2006 Act s 32(5)(b).

6 Ibid s 32(6).

7 See ibid s 34 (see also NOTE 1).

2. Freight information

The following provisions come into force on 1 April 2008 for the purposes of making an order under the Immigration, Asylum and Nationality Act 2006 s 33(5)(a): SI 2008/310.

The following provisions¹ apply to ships, aircraft and vehicles which are (1) arriving, or expected to arrive, in the United Kingdom, or (2) leaving, or expected to leave, the United Kingdom². If a constable of the rank of superintendent or above requires a specified person³ to provide freight information⁴ he must comply with the requirement⁵. A constable may impose such a requirement only if he thinks it necessary for police purposes⁶. A requirement (a) must be in writing, (b) may apply generally or only to one or more specified ships, aircraft or vehicles, (c) must specify a period, not exceeding six months and beginning with the date on which it is imposed, during which it has effect, and (d) must state (i) the information required, and (ii) the date or time by which it is to be provided⁷.

Provision is made as to the penalties that can be applied for non-compliance with a requirement to provide information under the above provisions⁸.

1 Ie the Immigration, Asylum and Nationality Act 2006 s 33.

2 Ibid s 33(1).

3 Ie specified in ibid s 33(3).

4 'Freight information' means information which is of a kind specified by order of the Secretary of State and which relates to freight carried: ibid s 33(5)(a). The Secretary of State may make an order specifying a kind of information under s 33(5)(a) only if satisfied that the nature of the information is such that there are likely to be circumstances in which it can be required under s 33(2) without breaching Convention rights (within the meaning of the Human Rights Act 1998): 2006 Act s 33(7). An order under s 33(5)(a) (1) may apply generally or only to specified cases or circumstances, (2) may make different provision for different cases or circumstances, (3) may specify the form and manner in which the information is to be provided, (4) must be made by statutory instrument, and (5) is subject to annulment in pursuance of a resolution of either House of Parliament: s 33(8).

5 Ibid s 33(2). The persons referred to in s 33(2) are (1) in the case of a ship or aircraft, the owner or agent, (2) in the case of a vehicle, the owner or hirer, and (3) in any case, persons responsible for the import or export of the freight into or from the United Kingdom: s 33(3).

6 Ibid s 33(4). 'Police purposes' has the meaning given by the Immigration and Asylum Act 1999 s 21(3) (see PARA 142): 2006 Act s 33(5)(b).

7 Ibid s 33(6).

8 See ibid s 34 (amended by SI 2007/3580).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(ii) Powers and Duties in relation to Arrivals/147. Passenger information and the notification of arrivals.

147. Passenger information and the notification of arrivals.

If an immigration officer asks a carrier¹ for passenger information² in respect of a ship, aircraft, through train³ or shuttle train⁴ which has arrived, or is expected to arrive, in the United Kingdom⁵, or which has left, or is expected to leave, the United Kingdom, the carrier must provide that information to the officer⁶.

The officer may ask for:

- 412 (1) passenger information relating to a particular ship, aircraft or train of the carrier⁷;
- 413 (2) passenger information relating to particular ships, aircraft or trains (however described) of the carrier⁸;
- 414 (3) passenger information relating to all of the carrier's ships, aircraft or trains⁹;
- 415 (4) all passenger information in relation to the ship, aircraft or train concerned¹⁰;
or
- 416 (5) particular passenger information in relation to that ship, aircraft or train¹¹.

The information must be provided in such form and manner as the Secretary of State may direct, and at such time as may be stated in the request¹².

If a senior officer¹³ or an immigration officer authorised by a senior officer gives written notice to a carrier, the carrier must inform a relevant officer¹⁴ of the expected arrival in the United Kingdom of any ship or aircraft of which he is the owner or agent, or through train of which he is the operator, and which he expects to carry a person who is not an EEA national¹⁵. The notice may relate to: (a) a particular ship, aircraft or through train of the carrier; (b) particular ships, aircraft or through trains (however described) of the carrier; or (c) all of the carrier's ships, aircraft or through trains¹⁶. The notice must state the date (which may not be later than six months after the notice is given) on which it ceases to have effect, and it continues in force until that date unless withdrawn earlier by written notice given by a senior officer¹⁷. The fact that a notice has ceased to have effect does not prevent it from being renewed¹⁸. The information must be provided in such form and manner as the notice may require and before the ship, aircraft or train concerned departs for the United Kingdom¹⁹.

1 le the owner or agent of a ship or aircraft or the operator of an international service or his agent: Immigration Act 1971 s 4(2), Sch 2 paras 27B(2), 27C(1) (Sch 2 paras 27B, 27C added by the Immigration and Asylum Act 1999 ss 18, 19; and modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(s), (t) (added by SI 2000/913); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). As to the meaning of 'ship' see para 87 note 2 ante. As to the meaning of 'aircraft' see para 87 note 3 ante. For the meaning of 'international service' see para 87 note 1 ante.

2 'Passenger information' means such information relating to the passengers carried, or expected to be carried, by the ship or aircraft or train as may be specified: Immigration Act 1971 Sch 2 para 27B(9) (as added and modified: see note 1 supra). 'Specified' means specified in an order made by statutory instrument by the Secretary of State which is subject to annulment in pursuance of a resolution of either House of Parliament: s 27B(10), (11) (as so added). The following types of information relating to a passenger, as given or shown by his passport or other travel document, have been specified: full name; gender; date of birth; nationality; type and number of travel document held; and the expiry date of any United Kingdom visa or other form of United

Kingdom entry clearance (where applicable): see the Immigration (Passenger Information) Order 2000, SI 2000/912, art 2(1), Schedule Pt I. The following types of information relating to a passenger have also been specified for these purposes, but only to the extent that they are known to the carrier: the passenger's name as it appears on his reservation; the ticket number; the date and place of issue of the ticket; the identity of the person who made the passenger's reservation on behalf of the carrier (if applicable); the method of payment for the ticket; the travel itinerary; the names of all other passengers appearing on the passenger's reservation; and, if the passenger is travelling with a car or other vehicle, the vehicle registration number and, if the vehicle has a trailer, the trailer registration number (if different from the vehicle registration number): see art 2(2), Schedule Pt II.

3 For the meaning of 'through train' see para 87 note 4 ante.

4 For the meaning of 'shuttle train' see para 87 note 5 ante.

5 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

6 Immigration Act 1971 Sch 2 para 27B(1), (2) (as added and modified: see note 1 supra). Such a request must be in writing, must state the date on which it ceases to have effect (which must not be later than six months after the request is made), and continues in force until that date unless withdrawn earlier by written notice by an immigration officer: Sch 2 para 27B(5), (6) (as so added). The fact that the request ceases to have effect does not prevent the request from being renewed: Sch 2 para 27B(7) (as so added).

As from a day to be appointed under the Immigration and Asylum Act 1999 s 170(4), Her Majesty may by Order in Council direct that the Immigration Act 1971 Sch 2 para 27B (as added and modified) or Sch 2 para 27C (as added and modified) is to have effect in relation to trains or vehicles as it has effect in relation to ships or aircraft: s 10(1A) (s 10(1A), (1B) prospectively added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 47(1), (3)). At the date at which this volume states the law no such day had been appointed. Any such order may make such adaptations or modifications, and such supplementary provisions, as appear to Her Majesty to be necessary or expedient for the purposes of the order (Immigration Act 1971 s 10(1B) (as so added), and may include provision for excluding the Republic of Ireland from s 1(3) (see para 94 ante) either generally or for any specified purposes (s 10(2) prospectively amended, but not so as to affect the meaning, by the Immigration and Asylum Act 1999 Sch 14 paras 43, 47(1), (4)). No recommendation may be made to Her Majesty to make an Order in Council under the Immigration Act 1971 s 10 (as amended) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament: s 10(3). As to the modification of the Immigration Act 1971 in relation to international services and the Channel Tunnel see note 1 supra.

7 Ibid Sch 2 para 27B(3)(a) (as added and modified: see note 1 supra).

8 Ibid Sch 2 para 27B(3)(b) (as added and modified: see note 1 supra).

9 Ibid Sch 2 para 27B(3)(c) (as added and modified: see note 1 supra).

10 Ibid Sch 2 para 27B(4)(a) (as added and modified: see note 1 supra).

11 Ibid Sch 2 para 27B(4)(b) (as added and modified: see note 1 supra).

12 Ibid Sch 2 para 27B(8) (as added: see note 1 supra). As to the Secretary of State see para 2 ante.

13 I.e. an immigration officer not below the rank of chief immigration officer: *ibid* Sch 2 para 27C(8) (as added and modified: see note 1 supra). See also note 6 supra.

14 I.e. the officer who gave the notice or any immigration officer at the port at which the ship, aircraft or through train concerned is expected to arrive: *ibid* Sch 2 para 27C(9) (as added and modified: see note 1 supra). See also note 6 supra.

15 Ibid Sch 2 para 27C(1) (as added and modified: see note 1 supra). See also note 6 supra. For these purposes, 'EEA national' means a national of a state which is a contracting party to the Agreement on the European Economic Area (Oporto, 2 May 1992; OJ L1, 3.1.94, p 3; Cm 2073) as it has effect for the time being: Immigration Act 1971 Sch 2 para 27C(10) (as so added). Cf para 227 post. As to EEA nationals see para 225 et seq post.

16 Ibid Sch 2 para 27C(2) (as added and modified: see note 1 supra). See also note 6 supra.

17 Ibid Sch 2 para 27C(3), (4) (as added and modified: see note 1 supra). See also note 6 supra.

18 Ibid Sch 2 para 27C(5) (as added and modified: see note 1 supra). See also note 6 supra.

19 Ibid Sch 2 para 27C(6) (as added and modified: see note 1 supra). If a ship, aircraft or train travelling to the United Kingdom stops at one or more places before arriving in the United Kingdom, it is treated as departing for the United Kingdom when it leaves the last of those places: Sch 2 para 27C(7) (as so added and modified). See also note 6 supra.

UPDATE

147 Passenger information and the notification of arrivals

TEXT AND NOTES--For police powers with respect to passenger and crew information see PARA 146A.

TEXT AND NOTES 1-12--References to passenger information are now to passenger information or service information: 1971 Act Sch 2 para 27B (amended by the Immigration, Asylum and Nationality Act 2006 s 31(3)(a)). 'Service information' means such information relating to the voyage or flight undertaken by the ship or aircraft as may be specified: 1971 Act Sch 2 para 27B(9A) (added by 2006 Act s 31(3)(b)).

NOTE 1--SI 1993/1813 Sch 4 para 1(11)(s) (on the substitution of the Immigration Act 1971 Sch 2 para 27B for the purposes of the security arrangements for the Channel Tunnel); SI 2004/1405 art 7 amended: SI 2007/3579.

NOTE 2--SI 2000/912 replaced: Immigration and Police (Passenger, Crew and Service Information) Order 2008, SI 2008/5.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(ii) Powers and Duties in relation to Arrivals/148. Notice of leave to enter or of refusal of leave.

148. Notice of leave to enter or of refusal of leave.

Where a person examined¹ by an immigration officer is to be given limited leave² to enter the United Kingdom³ or is to be refused leave, the notice giving or refusing leave must be given not later than 24 hours after the conclusion of his examination (including any further examination)⁴. This notice may be given in writing or by facsimile or electronic mail or, in relation to leave to enter the United Kingdom as a visitor, orally, including by means of a telecommunications system⁵. An immigration officer is not under a duty to consider fresh material after he has refused entry, although he has a discretion to do so⁶. If notice giving or refusing leave is not given before the end of those 24 hours, the person is (if he is not a British citizen) deemed to have been given leave to enter the United Kingdom for a period of six months subject to a prohibition on employment and the immigration officer must, as soon as may be, give him written notice of that leave⁷. If he is given notice of leave to enter the United Kingdom, then at any time before the end of 24 hours from the conclusion of the examination the person may be given a further notice in writing cancelling the earlier notice and refusing him leave to enter⁸. Conversely, a notice refusing leave to enter may be cancelled⁹ by a notice in writing given by an immigration officer; and where such a notice of cancellation is given and the immigration officer does not at the same time give indefinite or limited leave to enter, the notice of cancellation of the refusal is deemed to be a notice giving six-months' leave to enter subject to a condition prohibiting employment, and the immigration officer must, as soon as may be, give written notice of that leave¹⁰. Where an entrant¹¹ is a member of a party in the charge of a person appearing to the immigration officer to be a responsible person, any notice to be given in relation to that entrant is duly given if delivered to the person in charge of the party¹². Where notice refusing leave to enter is given orally to a visitor or to a responsible person or in any

non-written form to a responsible person, an immigration officer must as soon as practicable give him a notice in writing stating that he has been refused leave to enter the United Kingdom and stating the reasons for the refusal¹³.

1 le under the Immigration Act 1971 s 4, Sch 2 para 2: see para 143 ante. As to what constitutes an examination see the cases cited in note 7 infra.

2 'Limited leave' means leave under the Immigration Act 1971 to enter or remain in the United Kingdom which is limited as to duration: s 33(1).

3 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

4 Immigration Act 1971 Sch 2 para 6(1) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2; and the Immigration Act 1988 s 10, Schedule paras 7, 8). But where an immigration officer has commenced an examination to determine whether or not leave to enter should be given and that examination has been adjourned, or the person has been required to submit to further examination under the Immigration Act 1971 Sch 2 para 2(3) (see para 143 ante) while further inquiries are being made, and on completion of the inquiries an immigration officer considers he is in a position to decide whether or not to give or refuse leave to enter without a further interview, any notice giving or refusing leave to enter sent on any date thereafter by post or in any manner permitted by the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, is to be regarded as having been given within a period of 24 hours: art 12(1), (2). If an examination is begun by an immigration officer and continued by the Secretary of State, a notice in writing from the Secretary of State is deemed to be given within a period of 24 hours: Immigration (Leave to Enter) Order 2000, SI 2001/2590, art 4. As to the Secretary of State see para 2 ante. As a matter of construction 'notice' in the Immigration Act 1971 Sch 2 para 6(1) means 'valid notice': *R v Secretary of State for the Home Department, ex p Singh* [1999] Imm AR 149. An irregular notice which fails to describe rights of appeal or gives incorrect information is still sufficient notice for the purposes of the 24-hour rule: *Labiche v Secretary of State for the Home Department* [1991] Imm AR 263, CA; *R v Secretary of State for the Home Department, ex p Lateef* [1991] Imm AR 334 (defective because no statement of rights of appeal); *R v Secretary of State for the Home Department, ex p Coban* [1994] Imm AR 53, DC (notice of refusal served without proper regard to certain provisions, liable to be challenged by way of judicial review, is good and effective). See also *R v Secretary of State for the Home Department, ex p Hettierarachchi* [1991] Imm AR 378 (an amendment of the reasons given in the notice is legitimate and does not offend the 24-hour rule); *Dagdalen v Secretary of State for the Home Department* [1988] Imm AR 425, CA. However, where an immigration officer's stamp is unclear, it is not a valid notice and the 24-hour rule applies and extrinsic factors may not be taken into account: *Minton v Secretary of State for the Home Department* [1990] Imm AR 199, CA. The notice is validly delivered if it is given to a person authorised by the would-be immigrant to receive it (eg a legal representative): *R v Chief Immigration Officer of Manchester Airport, ex p Insah Begum* [1973] 1 All ER 594, [1973] 1 WLR 141, CA (decided under an identical provision contained in the Commonwealth Immigrants Act 1962 Sch 1 para 2 (repealed)). Where the Secretary of State agrees to reconsider his refusal of asylum, that does not amount to withdrawal of the notice of refusal of leave to enter and there is no breach of the rule: *R v Secretary of State for the Home Department, ex p Helal Ahmed* (13 February 1992, unreported), CA.

If a person granted temporary admission pending further examination fails to report to an immigration officer as required, the examination may be treated as concluded and the notice granting or refusing leave to enter is not required to be served within 24 hours: Immigration Act 1971 Sch 2 para 21(3), (4) (added by the Asylum and Immigration Act 1996 s 12(1), Sch 2 para 10).

Where a person has claimed asylum, made a human rights allegation, or sought leave to enter outside the Immigration Rules, the powers of an immigration officer under the Immigration Act 1971 Sch 2 para 6 may be exercised, if so ordered, by the Secretary of State: Immigration Act 1971 s 3A(7)-(9) (added by the Immigration and Asylum Act 1999 s 1). See the Immigration (Leave to Enter) Order 2001, SI 2001/2590, arts 2, 3. As to the Secretary of State see para 2 ante. As to the making of orders under the Immigration Act 1971 s 3A (as added) see para 86 note 5 ante. As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).

5 Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 8(1)-(3). For these purposes, 'leave to enter the United Kingdom as a visitor' means leave to enter as a visitor under the Immigration Rules for a period not exceeding six months, subject to conditions prohibiting employment and recourse to public funds (see para 99 note 8 ante): Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 8(4). Where any question arises under the Immigration Acts as to whether a person has leave to enter and he alleges that he has such leave by virtue of a notice given under the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 8(3) or art 9 (see note 12 infra), the onus is on him to show the manner and date of his entry to the United Kingdom: art 11. For the meaning of 'the Immigration Acts' see para 83 ante.

6 *R v Chief Immigration Officer at London (Heathrow) Airport, ex p Hazari* (1975) 120 Sol Jo 46, CA.

7 Immigration Act 1971 Sch 2 para 6(1) (as amended: see note 4 supra). As to British citizens and citizenship see paras 8, 23-43 ante.

Schedule 2 para 6(1) (as amended) applies only to cases where the prospective or uncommunicated decision envisaged is either that the person is to be given limited leave to enter or is to be refused leave to enter: *Rehal v Secretary of State for the Home Department* [1989] Imm AR 576, CA (immigration officer mistakenly believed that the applicant was a British citizen and did not stamp his passport; the Immigration Act 1971 Sch 2 para 6(1) (as amended) was held to have no application so that there was no deemed leave).

A person who is deemed to have leave to enter by virtue of the Immigration Act 1988 s 8 (see para 143 ante) is treated as having been given that leave by a notice given within the 24-hour period: ss 7(3), 8(3). As from a day to be appointed, s 8(3) is repealed by the Immigration and Asylum Act 1999 s 170(4). At the date at which this volume states the law no such day had been appointed.

There must have been an examination by an immigration officer: see *R v Secretary of State for the Home Department, ex p Kumar* [1990] Imm AR 265; and para 143 ante. As to the distinction between an 'interview' and an 'examination' for these purposes see *Secretary of State for the Home Department v Thirukumar* [1989] Imm AR 402, CA (an examination can involve more than one interview some time apart as well as investigations with which the interviewee is not personally involved); *R v Chief Immigration Officer of Manchester Airport, ex p Begum* [1972] 1 All ER 6, DC (affd [1973] 1 All ER 594, [1973] 1 WLR 141, CA); *R v Secretary of State for the Home Department, ex p Momji* (1973) Times, 18 October, CA; *R v Secretary of State for the Home Department, ex p V* [1988] Imm AR 561, DC (the examination is not concluded until all the relevant information is at hand).

8 Immigration Act 1971 Sch 2 para 6(2) (amended by the Immigration Act 1988 Schedule para 7(1)).

Where leave to enter is granted before arrival and is cancelled on arrival under the Immigration Act 1971 Sch 2 para 2A(7) (as added) (see para 143 ante), notice of cancellation must be in writing: Sch 2 para 2A(10) (Sch 2 para 2A added by the Immigration and Asylum Act 1999 Sch 14 paras 43, 58). A deemed leave to enter by virtue of the Immigration Act 1988 s 8 (see para 143 ante) may be cancelled by an immigration officer by notice in writing refusing leave to enter within 24 hours of the holder's arrival or from the conclusion of an examination under s 8(4) (see para 143 note 15 ante): s 8(5). As from a day to be appointed s 8 is repealed by the Immigration and Asylum Act 1999 s 170(4). At the date at which this volume states the law no such day had been appointed.

9 An immigration officer may also subsequently withdraw and amend the reasons for refusal without giving rise to a new (and late) notice for the purposes of the 24-hour rule: *Dagdalen v Secretary of State for the Home Department* [1988] Imm AR 425, CA; *R v Secretary of State for the Home Department, ex p Hettiarachchi* [1991] Imm AR 378; *R v Secretary of State for the Home Department, ex p Siddique* [1992] Imm AR 127 ('minded to refuse' asylum letter withdrawn because procedurally incorrect and a new one issued; held that the examination was to be deemed to continue until a further decision was taken).

10 Immigration Act 1971 Sch 2 para 6(3) (amended by the Immigration Act 1988 Schedule para 8(2)). Where an immigration officer gives notice refusing leave to enter under the Immigration Act 1988 s 8(5) (see note 8 supra), the Immigration Act 1971 Sch 2 para 6(3) (as amended) has effect as if any notice under the Immigration Act 1988 s 8(5) were a notice under that paragraph: s 8(6). As to the prospective repeal of s 8 see note 8 supra. Cancellation of advance leave to enter under the Immigration Act 1971 Sch 2 para 2A(8) (as added) has effect as a refusal of leave to enter to a holder of entry clearance: Sch 2 para 2A(9) (as added: see note 8 supra).

11 'Entrant' means a person entering or seeking to enter the United Kingdom: *ibid* s 33(1) (definition substituted by the Asylum and Immigration Act 1996 s 12(1), Sch 2 para 4(1)).

12 Immigration Act 1971 Sch 2 para 6(4). See also the Immigration (Leave to Enter and Remain) Order, SI 2000/1161, art 9(1). Such a notice may refer to a person to whom leave is being granted or refused either by name or by reference to a description or category of persons which includes him: art 9(2). Where an immigration officer gives notice refusing leave to enter under the Immigration Act 1988 s 8(5) (see note 8 supra), the Immigration Act 1971 Sch 2 para 6(4) has effect as if any notice under the Immigration Act 1988 s 8(5) was a notice under that provision: s 8(6). As to the prospective repeal of s 8 see note 8 supra.

13 Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 10(1).

UPDATE

148 Notice of leave to enter or of refusal of leave

NOTE 5--An immigration officer may authorise a person to be a person who may obtain leave to enter the United Kingdom by passing through an automated gate: see the

Immigration (Leave to Enter and Remain) (Amendment) Order 2000, SI 2000/1161, art 8A (added by SI 2010/957). No notice is to be given under SI 2000/1161 art 8 where a person is given leave to enter the United Kingdom by passing through an automated gate in accordance with art 8A: art 8(5) (added by SI 2010/957).

TEXT AND NOTE 10--After 'does not at the same time give indefinite or limited leave to enter' read 'or require him to submit to further examination': 1971 Act Sch 2 para 6(3) (amended by the Nationality, Immigration and Asylum Act 2002 s 119).

NOTE 10--1971 Act Sch 2 para 2A(9) amended: Nationality, Immigration and Asylum Act 2002 Sch 7 para 2.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(ii) Powers and Duties in relation to Arrivals/149. Medical examination after entry.

149. Medical examination after entry.

If an immigration officer examining a person who has arrived in the United Kingdom¹ decides that he may be given leave to enter the United Kingdom, or, in the case of a person who arrived in the United Kingdom with continuing leave², that it should not be cancelled, but that a further medical test or examination may be required in the interests of public health³, the immigration officer may give the person concerned notice in writing requiring him to report his arrival to such medical officer of health as may be specified in the notice, and to attend at such place and time and submit to such test or examination (if any) as that medical officer of health may require⁴. In reaching a decision on whether a further medical test or examination may be required, the immigration officer must act on the advice of a medical inspector⁵ or, if no medical inspector is available, a fully qualified medical practitioner⁶.

1 Ie under the Immigration Act 1971 s 4, Sch 2 para 2 (as amended): see para 143 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Ie under ibid Sch 2 para 2A (as added): see para 143 ante.

3 Ibid Sch 2 para 7(1), (2) (Sch 2 para 7 substituted by the Immigration and Asylum Act 1999 s 169(1), Sch 14 para 59). The power to refer to the medical inspector is exercisable by the Secretary of State in relation to a person who has claimed asylum, made a human rights allegation, or sought leave to enter outside the Immigration Rules: Immigration Act 1971 s 3A(7)-(9) (added by the Immigration and Asylum Act 1999 s 1); Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 3. As to the Secretary of State see para 2 ante. As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).

4 Immigration Act 1971 Sch 2 para 7(3) (as substituted: see note 3 supra). See also para 143 ante. As to medical examinations see the Immigration Rules paras 36-39.

5 See para 143 ante.

6 Immigration Act 1971 Sch 2 para 7(4) (as substituted: see note 3 supra).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(ii) Powers and Duties in relation to Arrivals/150. Fingerprinting.

150. Fingerprinting.

Fingerprints may be taken by an authorised person¹ from the following categories of persons²:

- 417 (1) any person who, on being required to do so by an immigration officer on his arrival in the United Kingdom³, fails to produce a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship⁴;
- 418 (2) any person who has been refused leave to enter the United Kingdom but has been temporarily admitted⁵ if an immigration officer reasonably suspects that he might break any condition imposed on him relating to residence or as to reporting to the police or an immigration officer⁶;
- 419 (3) any person in respect of whom: (a) an immigration officer has given directions⁷; (b) the Secretary of State has given removal directions to the owners or agents of any ship or aircraft⁸; or (c) the Secretary of State has given removal directions regarding a person liable to deportation⁹;
- 420 (4) any person liable to be detained who has been arrested¹⁰;
- 421 (5) any person who has made a claim for asylum¹¹;
- 422 (6) any person who is a dependant of any of those persons¹².

However, fingerprints may only be so taken during a limited period ('the relevant period')¹³.

Fingerprints may not be taken from a child under the age of 16 except in the presence of a person of full age who is the child's parent or guardian, or a person¹⁴ who for the time being takes responsibility for the child¹⁵. An authorised person may not take fingerprints from a child under the age of 16 unless his decision to take them has been confirmed: (i) if he is a constable, by a person designated for the purpose by the chief constable of his police force; (ii) if he is an immigration officer or a person who is employed by a contractor in connection with the discharge of the contractor's duties under a detention centre contract, by a chief immigration officer; (iii) if he is a prison officer, by a person designated for the purpose by the governor of the prison; (iv) if he is an officer of the Secretary of State, by a person designated for the purpose by the Secretary of State¹⁶. Nothing prevents an authorised person from taking fingerprints if he reasonably believes that the person from whom they are to be taken is aged 16 or over¹⁷.

The Secretary of State may, by notice in writing, require a person to attend at a specified place for fingerprinting¹⁸. The notice must give the person concerned a period of at least seven days within which to attend, beginning not earlier than seven days after the date of the notice, and may require him to attend at a specified time of day or during specified hours¹⁹. A constable or immigration officer may arrest without warrant a person who has failed to comply with a requirement imposed on him under such a notice (unless the requirement has ceased to have effect)²⁰. Before a person so arrested is released he may be removed to a place where his fingerprints may conveniently be taken, and his fingerprints may be taken (whether or not he is so removed)²¹. A requirement to attend for fingerprinting ceases to have effect at the end of the relevant period²².

If they have not already been destroyed, fingerprints must be destroyed before the end of the specified period²³ beginning with the day on which they were taken²⁴. If a person from whom fingerprints were taken proves that he is a British citizen, or a Commonwealth citizen who has a right of abode in the United Kingdom²⁵, the fingerprints must be destroyed as soon as reasonably practicable²⁶. The Secretary of State must take all reasonably practicable steps to secure that data held in electronic form relating to fingerprints which have to be destroyed is destroyed or erased, or that access to such data is blocked²⁷.

The Secretary of State may make regulations containing provisions equivalent to those described above in relation to such other methods of collecting data about external physical characteristics as may be prescribed²⁸.

1 'Authorised person' means a constable, an immigration officer, a prison officer, an officer of the Secretary of State authorised for the purpose, or a person who is employed by a contractor in connection with the discharge of the contractor's duties under a detention centre contract: Immigration and Asylum Act 1999 s 141(5). As to the Secretary of State see para 2 ante. 'Contractor', in relation to a detention centre which is being run in accordance with a detention centre contract, means the person who has contracted to run it: ss 141(6), 147. 'Detention centre contract' means a contract entered into by the Secretary of State under s 149 (see para 157 post): ss 141(6), 147. A person who is authorised to take fingerprints may, if necessary, use reasonable force: s 146(2). An immigration officer exercising the power to take fingerprints must have regard to such code of practice as may be specified, for the time being in force under the Police and Criminal Evidence Act 1984: Immigration and Asylum Act 1999 s 145. As to the code of practice see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 1021. As to the Secretary of State see para 2 ante.

2 Ibid s 141(1).

3 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

4 Immigration and Asylum Act 1999 s 141(7)(a). No fingerprints may be taken from such a person if the immigration officer considers that that person has a reasonable excuse for the failure concerned: s 141(10).

5 Ie under the Immigration Act 1971 s 4, Sch 2 para 21: see para 212 post.

6 Immigration and Asylum Act 1999 s 141(7)(b). No fingerprints may be taken from such a person unless the decision to take them has been confirmed by a chief immigration officer: s 141(11).

7 Ie under the Immigration Act 1971 Sch 2 para 9(1) (as amended) (see para 152 post) or under the Immigration and Asylum Act 1999 s 10 (see para 154 post).

8 Ie under the Immigration Act 1971 Sch 2 para 10(1) (as amended): see para 152 post. Head (b) in the text only applies in a case where it appears to the Secretary of State that the person is a person in respect of whom directions under Sch 2 para 9 (as amended) might be given: Immigration and Asylum Act 1999 s 141(7)(c)(ii).

9 Ibid s 141(7)(c)(i)-(iii). Head (c) in the text refers to directions under the Immigration Act 1971 s 5, Sch 3 para 1(1): see para 163 post.

10 Immigration and Asylum Act 1999 s 141(7)(d). The reference in the text to a person who has been arrested is a reference to one who has been arrested under the Immigration Act 1971 Sch 2 para 17 (as amended): see para 156 post.

11 Immigration and Asylum Act 1999 s 141(7)(e). 'Claim for asylum' means a claim that it would be contrary to the United Kingdom's obligations under the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906) or under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 3 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 122 et seq) for the claimant to be removed from or required to leave the United Kingdom: Immigration and Asylum Act 1999 s 94(1), 141(15). See also para 238 text and note 2 post. As to claims for asylum see para 238 et seq post.

12 Ibid s 141(7)(f). For these purposes, a person is a dependant of another person if he is that person's spouse or child under the age of 18, and he does not have a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom in his own right: s 141(14). As to the right of abode see para 85 ante. See also para 14 ante.

13 Ibid s 141(2). The relevant period begins:

77 (1) under head (1) in the text, on the person's failure to produce the passport or other document (s 141(8)(a));

78 (2) under head (2) in the text, on the decision to admit the person temporarily (s 141(8)(b));

79 (3) under head (3) in the text, on the direction being given (s 141(8)(c));

80 (4) under head (4) in the text, on his arrest (s 141(8)(d));

- 81 (5) under head (5) in the text, on the making of his claim for asylum (s 141(8)(e)); and
- 82 (6) under head (6) in the text, at the same time as for the person whose dependant he is (s 141(8)(f)).

The relevant period ends on the earliest of:

- 83 (a) the grant of leave to enter or remain in the United Kingdom (s 141(9)(a));
- 84 (b) under heads (1)-(4) in the text, the person's removal or deportation from the United Kingdom (s 141(9)(b));
- 85 (c) under head (3) in the text, if a deportation order has been made against the person, its revocation or otherwise ceasing to have effect (s 141(9)(c));
- 86 (d) under head (4) in the text, that person's release if he is no longer liable to be detained under the Immigration Act 1971 Sch 2 para 16 (as amended) (see para 156 post) (Immigration and Asylum Act 1999 s 141(9)(d));
- 87 (e) under head (5) in the text, the final determination or abandonment of the person's claim for asylum (s 141(9)(e)); and
- 88 (f) under head (6) in the text, at the same time as for the person whose dependant he is (s 141(9)(f)).

14 Such a person may not be: (1) an officer of the Secretary of State who is not an authorised person; (2) an authorised person (see note 1 supra): *ibid* s 141(4).

15 *Ibid* s 141(3).

16 *Ibid* s 141(12).

17 *Ibid* s 141(13).

18 *Ibid* s 142(1).

19 *Ibid* s 142(2).

20 *Ibid* s 142(3).

21 *Ibid* s 142(4).

22 *Ibid* s 142(5). As to the relevant period see note 13 supra.

23 'Specified period' means such period as the Secretary of State may specify by order, or if no period is so specified, ten years: *ibid* s 143(15). At the date at which this volume states the law no such order had been made. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante. No order is to be made under s 143(15) unless a draft of the order has been laid before Parliament and approved by a resolution of each House (s 166(4)(g)), and accordingly any statutory instrument made under s 143(15) is not subject to annulment by a resolution of either House of Parliament (s 166(6)(a)).

24 *Ibid* s 143(1). The obligation to destroy fingerprints applies also to copies of fingerprints: s 143(10).

25 As to British citizens and citizenship see paras 8, 23-43 ante. As to Commonwealth citizens see para 11 ante. As to Commonwealth citizens having a right of abode see the Immigration Act 1971 s 2(1)(b) (as amended); and para 85 ante.

26 Immigration and Asylum Act 1999 s 143(2). Fingerprints taken from a dependant within the meaning of s 141(7) (see note 12 supra) must be destroyed when fingerprints taken from the person whose dependant he is have to be destroyed: s 143(9). The Anti-terrorism, Crime and Security Act 2001 ss 36, 125, Sch 8 Pt 3 repealed the Immigration and Asylum Act 1999 s 143(3)-(8), (14) (obligation to destroy fingerprints on resolution of asylum and immigration cases). This repeal has effect in relation to fingerprints taken before and after the coming into force of the Anti-terrorism Crime and Security Act 2001 s 36 and in relation to fingerprints which before the coming into force of s 36 were required to be destroyed: see s 36(2).

27 Immigration and Asylum Act 1999 s 143(11). The person to whom the data relates is entitled, on request, to a certificate issued by the Secretary of State to the effect that he has destroyed or blocked access to the

data: s 143(12). Such a certificate must be issued within three months of the date of the request for it: s 143(13).

28 Ibid s 144. At the date at which this volume states the law no such regulations had been made. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante. No regulations may be made under s 144 unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House (s 166(5)(d)), and accordingly any statutory instrument made under s 144 is not subject to annulment by a resolution of either House of Parliament (s 166(6)(a)).

UPDATE

150 Fingerprinting

TEXT AND NOTES--For provision relating to biometric registration see PARA 150A.

TEXT AND NOTES 1-17, 24-27--The 1999 Act ss 141, 143 apply with modifications in a control zone in France: Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003, SI 2003/2181, art 11(1)(f), Sch 2 para 1A (both added by SI 2006/2908).

TEXT AND NOTES 1-17--The 1999 Act s 157(1) applies to s 141 (in so far as it relates to removal centres by virtue of s 141(5)(e)) as it applies to Pt 8: s 141(17) (added by Immigration, Asylum and Nationality Act 2006 s 28(4)).

NOTE 1--1999 Act s 146(2) substituted: Nationality, Immigration and Asylum Act 2002 s 153(2). Detention centres are now known as removal centres and the definition of 'detention centre contract' in the 1999 Act s 147 is amended accordingly: see the 2002 Act s 66.

TEXT AND NOTES 7-9--Now, head (3) any person in respect of whom a relevant immigration decision has been made: 1999 Act s 141(7)(c) (substituted by Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 15(2)). 'Relevant immigration decision' means a decision of the kind mentioned in the 2002 Act s 82(2)(g), (h), (i), (j) or (k) (see PARA 173A.2) or a decision that UK Borders Act 2007 s 32(5) (see PARA 160A.1) applies: 1999 Act s 141(16) (added by 2004 Act s 15(5) and amended by Borders, Citizenship and Immigration Act 2009 s 51(3)).

TEXT AND NOTE 10--1999 Act s 141(7)(d) amended: 2006 Act s 28(2).

TEXT AND NOTE 12--1999 Act s 141(7)(f) amended: Borders, Citizenship and Immigration Act 2009 s 51(2).

NOTE 13--Now, head (3) under head (3) in the text, on the service on him of notice of the relevant immigration decision by virtue of the 2002 Act s 105 (see PARA 173A.2): 1999 Act s 141(8)(c) (substituted by 2004 Act s 15(3)). Head (4). In 1999 Act s 141(8) (d) for 'arrest' read 'detention or arrest': 2006 Act s 28(3).

Now, head (c) under head (c) in the TEXT (i) the time when the relevant immigration decision ceases to have effect, whether as a result of an appeal or otherwise; or (ii) if a deportation order has been made against him, its revocation or its otherwise ceasing to have effect: 1999 Act s 141(9)(c) (substituted by 2004 Act s 15(4)).

TEXT AND NOTE 19--1999 Act s 142(2) substituted, s 142(2A) added: 2006 Act s 29.

TEXT AND NOTE 28--1999 Act s 144 now s 144(1): 2002 Act s 128(1). For the purposes of s 144(1), 'external physical characteristics' includes, in particular, features of the iris or any other part of the eye: 1999 Act s 144(2) (added by 2002 Act s 128(1)). A person exercising a power under regulations made by virtue of the 1999 Act s 144 must have regard to such provisions of a code of practice as may be specified: s 145(2A) (added by 2002 Act s 128(2)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(ii) Powers and Duties in relation to Arrivals/150A. Biometric registration.

150A. Biometric registration.

1. Registration regulations

The Secretary of State may make regulations (1) requiring a person subject to immigration control¹ to apply for the issue of a document² recording biometric information³ (a 'biometric immigration document'); (2) requiring a biometric immigration document to be used (a) for specified immigration purposes, (b) in connection with specified immigration procedures, or (c) in specified circumstances, where a question arises about a person's status in relation to nationality or immigration; (3) requiring a person who produces a biometric immigration document by virtue of head (2) above to provide information for comparison with information provided in connection with the application for the document⁴.

Regulations under head (1) above may, in particular (i) apply generally or only to a specified class of persons subject to immigration control (for example, persons making or seeking to make a specified kind of application for immigration purposes); (ii) specify the period within which an application for a biometric immigration document must be made; (iii) make provision about the issue of biometric immigration documents; (iv) make provision about the content of biometric immigration documents (which may include non-biometric information); (v) make provision permitting a biometric immigration document to be combined with another document; (vi) make provision for biometric immigration documents to begin to have effect, and cease to have effect, in accordance with the regulations; (vii) require a person who acquires a biometric immigration document, without the consent of the person to whom it relates or of the Secretary of State, to surrender it to the Secretary of State as soon as is reasonably practicable; (viii) permit the Secretary of State to require the surrender of a biometric immigration document in other specified circumstances; (ix) permit the Secretary of State on issuing a biometric immigration document to require the surrender of other documents connected with immigration or nationality⁵. Regulations under head (1) above may permit the Secretary of State to cancel a biometric immigration document (A) if the Secretary of State thinks that information provided in connection with the document was or has become false, misleading or incomplete, (B) if the Secretary of State thinks that the document has been lost or stolen, (C) if the Secretary of State thinks that the document (including any information recorded in it) has been altered, damaged or destroyed (whether deliberately or not), (D) if the Secretary of State thinks that an attempt has been made (whether successfully or not) to copy the document or to do anything to enable it to be copied, (E) if the Secretary of State thinks that a person has failed to surrender the document in accordance with head (vii) or (viii) above, (F) if the Secretary of State thinks that the document should be re-issued (whether because the information recorded in it requires alteration or for any other reason), (G) if the Secretary of State thinks that the holder is to be given leave to enter or remain in the United Kingdom, (H) if the Secretary of State thinks that the holder's leave to enter or remain in the United Kingdom is to be varied, cancelled or invalidated or to lapse, (I) if the Secretary of State thinks that the holder has died, (J) if the Secretary of State thinks that the holder has been removed from the United Kingdom (whether by deportation or otherwise), (K) if the Secretary of State thinks that the holder has left the United Kingdom without retaining leave to enter or remain, and (L) in such other circumstances as the regulations may specify⁶. Regulations under head (1) above may require notification to be given to the Secretary of State by the holder of a biometric immigration document (aa) who knows or suspects that the document has been lost or stolen,

(bb) who knows or suspects that the document has been altered or damaged (whether deliberately or not), (cc) who knows or suspects that information provided in connection with the document was or has become false, misleading or incomplete, (dd) who was given leave to enter or remain in the United Kingdom in accordance with a provision of immigration rules⁷ and knows or suspects that owing to a change of the holder's circumstances the holder would no longer qualify for leave under that provision, or (ee) in such other circumstances as the regulations may specify⁸. Regulations under head (1) above may require a person applying for the issue of a biometric immigration document to provide information (which may include biographical or other non-biometric information) to be recorded in it or retained by the Secretary of State; and, in particular, the regulations may (AA) require, or permit an authorised person⁹ to require, the provision of information in a specified form; (BB) require an individual to submit, or permit an authorised person to require an individual to submit, to a specified process by means of which biometric information is obtained or recorded; (CC) confer a function (which may include the exercise of a discretion) on an authorised person; (DD) permit the Secretary of State, instead of requiring the provision of information, to use or retain information which is (for whatever reason) already in the Secretary of State's possession¹⁰.

Regulations under head (2) above may, in particular, require the production or other use of a biometric immigration document that is combined with another document¹¹. Regulations under head (2) above may not make provision the effect of which would be to require a person to carry a biometric immigration document at all times¹².

Regulations under head (3) above may, in particular, make provision of a kind specified in head (AA) or (BB) above¹³.

Rules¹⁴ may require a person applying for the issue of a biometric immigration document to provide non-biometric information to be recorded in it or retained by the Secretary of State¹⁵.

Supplementary provision with respect to regulations is made¹⁶.

1 For the purposes of the UK Borders Act 2007 s 5 'person subject to immigration control' means a person who under the Immigration Act 1971 requires leave to enter or remain in the United Kingdom (whether or not such leave has been given): s 15(1)(a). 'Immigration' includes asylum: s 15(1)(f).

2 For these purposes 'document' includes a card or sticker and any other method of recording information (whether in writing or by the use of electronic or other technology or by a combination of methods): *ibid* s 15(1)(d).

3 For these purposes 'biometric information' means information about external physical characteristics: *ibid* s 15(1)(b). 'External physical characteristics' includes, in particular (1) fingerprints, and (2) features of the iris or any other part of the eye: s 15(1)(c).

An application for a biometric immigration document is an application in connection with immigration for the purposes of (a) the Immigration, Asylum and Nationality Act 2006 s 50(1), (2) (procedure), and (b) s 51 (fees); and in the application of either of those provisions to an application for a biometric immigration document, the prescribed consequences of non-compliance may include any of the consequences specified in the 2007 Act s 7(2) (see PARA 150A.2): s 15(2).

4 *Ibid* s 5(1). Regulations permitting something to be done by the Secretary of State may (but need not) permit it to be done only where the Secretary of State is of a specified opinion: s 15(1)(g). As to regulations requiring certain persons under immigration control to apply for a biometric immigration document, see the Immigration (Biometric Registration) Regulations 2008, SI 2008/3048 (amended by SI 2009/819, SI 2009/3321).

5 2007 Act s 5(2).

6 *Ibid* s 5(3).

7 *Ie* under the Immigration Act 1971 s 3.

8 2007 Act s 5(4).

9 For the purposes of *ibid* s 5 'authorised person' has the meaning given by the Immigration and Asylum Act 1999 s 141(5) (authority to take fingerprints): 2007 Act s 15(1)(e).

10 Ibid s 5(5). See further NOTE 15.

11 Ibid s 5(6). The Identity Cards Act 2006 s 16 (prohibition of requirement to produce ID card) is subject to the 2007 Act s 5(6): s 5(6). See further NOTE 15.

12 Ibid s 5(7). See further NOTE 15.

13 Ibid s 5(8). See further NOTE 15.

14 Ie under the Immigration Act 1971 s 3.

15 2007 Act s 5(9).

Section 5(5)-(9) is without prejudice to the generality of the Immigration, Asylum and Nationality Act 2006 s 50 (see PARA 83): 2007 Act s 5(10).

16 See ibid s 6.

2. Effect of non-compliance

Regulations¹ must include provision about the effect of failure to comply with a requirement of the regulations². In particular, the regulations may (1) require or permit an application for a biometric immigration document³ to be refused; (2) require or permit an application or claim in connection with immigration⁴ to be disregarded or refused; (3) require or permit the cancellation or variation of leave to enter or remain in the United Kingdom; (4) require the Secretary of State to consider giving a notice⁵; (5) provide for the consequence of a failure to be at the discretion of the Secretary of State⁶. The regulations may also permit the Secretary of State to designate an adult⁷ as the person responsible for ensuring that a child⁸ complies with requirements of the regulations⁹.

1 Ie regulations under the UK Borders Act 2007 s 5(1): see PARA 150A.1.

2 Ibid s 7(1).

3 As to an 'application for a biometric immigration document' see PARA 150A.1.

4 For the meaning of 'immigration' see PARA 150A.1.

5 Ie a notice under the 2007 Act s 9: see PARA 150A.4.

6 Ibid s 7(2).

7 'Adult' means an individual who has attained the age of 18: ibid s 7(3)(a).

8 'Child' means an individual who has not attained the age of 18: ibid s 7(3)(b).

9 Ibid s 7(3).

Sections 9-13 (see PARAS 150A.4-150A.8) apply (with any necessary modifications) to a designated adult's failure to ensure compliance by a child with a requirement of regulations as they apply to a person's own failure to comply with a requirement: s 7(3)(c).

3. Use and retention of information

Regulations¹ must make provision about the use and retention by the Secretary of State of biometric information² provided in accordance with the regulations³. The regulations may include provision permitting the use of information (1) in connection with the exercise of a function by virtue of the Immigration Acts, (2) in connection with control of the United Kingdom's borders, (3) in connection with the exercise of a function in relation to nationality, (4) in connection with the prevention, investigation or prosecution of an offence, (5) for a purpose which appears to the Secretary of State to be required in order to protect national

security, and (6) for such other purposes (whether in connection with functions under an enactment or otherwise) as the regulations may specify⁴. Regulations⁵ (a) must include provision about the destruction of biometric information held by the Secretary of State having been obtained or recorded by virtue of the regulations, (b) must, in particular, require the destruction of biometric information held by the Secretary of State if the Secretary of State thinks that it is no longer likely to be of use⁶, and (c) must, in particular, include provision similar to provision in the Immigration and Asylum Act 1999 relating to the destruction of fingerprint data⁷ but a requirement to destroy information does not apply if and in so far as the information is retained in accordance with and for the purposes of another enactment⁸.

1 le under the UK Borders Act 2007 s 5(1): see PARA 150A.1.

2 For the meaning of 'biometric information' see PARA 150A.1.

3 2007 Act s 8(1).

4 Ibid s 8(2).

5 le under ibid s 5(1).

6 le in accordance with provision made by virtue of ibid s 8(1).

7 le provision similar to the Immigration and Asylum Act 1999 s 143(2), (10)-(13) (see PARA 150): 2007 Act s 8(3).

8 Ibid s 8(4).

4. Penalty

The Secretary of State may by notice require a person to pay a penalty for failing to comply with a requirement of regulations¹. The notice must (1) specify the amount of the penalty, (2) specify a date before which the penalty must be paid to the Secretary of State, (3) specify methods by which the penalty may be paid, (4) explain the grounds on which the Secretary of State thinks the person has failed to comply with a requirement of the regulations, and (5) explain the effect of provisions relating to penalties². The amount specified under head (1) above may not exceed £1,000³. The date specified under head (2) above must be not less than 14 days after the date on which the notice is given⁴. A person who has been given a notice⁵ for failing to comply with regulations may be given further notices in the case of continued failure; but a person may not be given a new notice (a) during the time available for objection or appeal against an earlier notice, or (b) while an objection or appeal against an earlier notice has been instituted and is neither withdrawn nor determined⁶.

1 UK Borders Act 2007 s 9(1), referring to regulations under s 5(1) (see PARA 150A.1).

2 Ibid s 9(2), referring to the effect of ss 10-12 (see PARAS 150A.5-150A.7).

3 Ibid s 9(3). The Secretary of State may by order amend s 9(3) to reflect a change in the value of money: s 9(6). An order under s 9(6) (1) may make provision generally or only for specified purposes, (2) may make different provision for different purposes, (3) must be made by statutory instrument, and (4) is subject to annulment in pursuance of a resolution of either House of Parliament: s 14(2).

4 Ibid s 9(4).

5 le under ibid s 9(1).

6 Ibid s 9(5).

5. Penalty: objection

A person ('P') who is given a penalty notice¹ may by notice to the Secretary of State object on the grounds (1) that P has not failed to comply with a requirement of regulations², (2) that it is unreasonable to require P to pay a penalty, or (3) that the amount of the penalty is excessive³. A notice of objection must (a) specify the grounds of objection and P's reasons, (b) comply with any prescribed⁴ requirements as to form and content, and (c) be given within the prescribed period⁵. The Secretary of State must consider a notice of objection and (i) cancel the penalty notice, (ii) reduce the penalty by varying the penalty notice, (iii) increase the penalty by issuing a new penalty notice, or (iv) confirm the penalty notice⁶. The Secretary of State must act under the above provision⁷ and notify P (A) in accordance with any prescribed requirements, and (B) within the prescribed period or such longer period as the Secretary of State and P may agree⁸.

1 Ie under the UK Borders Act 2007 s 9(1): see PARA 150A.4.

2 Ie under *ibid* s 5(1): see PARA 150A.1.

3 *Ibid* s 10(1).

4 'Prescribed' means prescribed by the Secretary of State by order: *ibid* s 14(1). An order under s 14(1) (1) may make provision generally or only for specified purposes, (2) may make different provision for different purposes, (3) must be made by statutory instrument, and (4) is subject to annulment in pursuance of a resolution of either House of Parliament: s 14(2). See the Immigration (Biometric Registration) (Objection to Civil Penalty) Order 2008, SI 2008/2830.

5 2007 Act s 10(2).

6 *Ibid* s 10(3).

7 Ie under *ibid* s 10(3).

8 *Ibid* s 10(4).

6. Penalty: appeal

A person (P) who is given a penalty notice¹ may appeal to a county court, in England and Wales or Northern Ireland². An appeal may be brought on the grounds (1) that P has not failed to comply with a requirement of regulations³, (2) that it is unreasonable to require P to pay a penalty, or (3) that the amount of the penalty is excessive⁴. The court may (a) cancel the penalty notice, (b) reduce the penalty by varying the penalty notice, (c) increase the penalty by varying the penalty notice (whether because the court thinks the original amount insufficient or because the court thinks that the appeal should not have been brought), or (d) confirm the penalty notice⁵. An appeal may be brought (i) whether or not P has given a notice of objection, and (ii) irrespective of the Secretary of State's decision on any notice of objection⁶. The court may consider matters of which the Secretary of State was not and could not have been aware before giving the penalty notice⁷. Rules of court may make provision about the timing of an appeal under the above provisions⁸.

1 Ie under the UK Borders Act 2007 s 9(1): see PARA 150A.4.

2 *Ibid* s 11(1).

3 Ie under *ibid* s 5(1): see PARA 150A.1.

4 *Ibid* s 11(2).

5 *Ibid* s 11(3).

6 *Ibid* s 11(4).

7 *Ibid* s 11(5).

8 Ibid s 11(6).

7. Penalty: enforcement

Where a penalty has not been paid before the date specified in the penalty notice¹, it may be recovered as a debt due to the Secretary of State². Where a notice of objection is given in respect of a penalty notice, the Secretary of State may not take steps to enforce the penalty notice before (1) deciding what to do in response to the notice of objection, and (2) informing the objector³. The Secretary of State may not take steps to enforce a penalty notice while an appeal⁴ (a) could be brought (disregarding any possibility of an appeal out of time with permission), or (b) has been brought and has not been determined or abandoned⁵. In proceedings for the recovery of a penalty no question may be raised as to specified matters⁶ as grounds for objection or appeal⁷. Money received by the Secretary of State in respect of a penalty must be paid into the Consolidated Fund⁸.

1 Ibid in accordance with the UK Borders Act 2007 s 9(2)(b): see PARA 150A.4.

2 Ibid s 12(1).

3 Ibid s 12(2).

4 Ibid an appeal under ibid s 11: see PARA 150A.6.

5 Ibid s 12(3).

6 Ibid the matters specified in ibid ss 10 (see PARA 150A.5), 11 (see PARA 150A.6).

7 Ibid s 12(4).

8 Ibid s 12(5).

8. Penalty: code of practice

The Secretary of State must issue a code of practice setting out the matters to be considered in determining (1) whether to give a penalty notice¹, and (2) the amount of a penalty². The code may, in particular, require the Secretary of State to consider any decision taken³. A court must, when considering an appeal⁴, have regard to the code⁵. The Secretary of State may revise and re-issue the code⁶. Before issuing or re-issuing the code the Secretary of State must (a) publish proposals, (b) consult members of the public, and (c) lay a draft before Parliament⁷. The code (or reissued code) comes into force at the prescribed⁸ time⁹.

1 Ibid under the UK Borders Act 2007 s 9(1): see PARA 150A.4.

2 Ibid s 13(1). The Secretary of State has issued the *Code of practice about the sanctions for non-compliance with the biometric registration regulations*.

3 Ibid s 13(2), referring to any decision taken by virtue of s 7 (see PARA 150A.2).

4 Ibid under ibid s 11: see PARA 150A.6.

5 Ibid s 13(3).

6 Ibid s 13(4).

7 Ibid s 13(5).

8 For the meaning of 'prescribed' see PARA 150A.5.

9 2007 Act s 13(6), but the first order under s 13(6) must not be made unless a draft has been laid before and approved by resolution of each House of Parliament (and is not subject to annulment) (s 14(3)). The *Code of practice about the sanctions for non-compliance with the biometric registration regulations* (see NOTE 2) came into force on 25 November 2008: Immigration (Biometric Registration) (Civil Penalty Code of Practice) Order 2008, SI 2008/3049.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(ii) Powers and Duties in relation to Arrivals/151. Illegal entry.

151. Illegal entry.

An illegal entrant is a person unlawfully entering or seeking to enter¹ (whether or not he has arrived in the United Kingdom²) in breach of a deportation order or of the immigration laws³, or by means which include deception by another person⁴, and includes also a person who has so entered⁵.

Illegal entrants fall into three main categories:

- 423 (1) those who entered the United Kingdom without leave⁶ or who have absconded after being granted temporary admission⁷;
- 424 (2) those who enter in breach of a deportation order⁸;
- 425 (3) those who have secured leave by means of material⁹ deception¹⁰.

Whether a person is an illegal entrant is a jurisdictional fact. It is a condition precedent which has to be present before the immigration officer's power to remove on the ground of illegal entry arises¹¹. Accordingly, a court will investigate the facts itself¹². The burden of proving illegal entry falls on the Home Office if evidence of leave to enter (for example, a passport stamp) is produced¹³. The standard of proof is the civil one of the balance of probabilities but adapted so as to take into account the serious consequences of an allegation of fraud¹⁴. Misrepresentation by silence or conduct amounts to deception for these purposes but there is no positive duty of candour on the part of the entrant¹⁵.

An illegal entrant has no right or legitimate expectation to have an application for variation of leave or an appeal determined or to remain in the United Kingdom to pursue an appeal¹⁶ unless he has made a claim for asylum¹⁷ or alleges that the decision to remove him would racially discriminate against him or breach his human rights¹⁸.

A person who was an illegal entrant before 1 January 1973¹⁹ remains an illegal entrant thereafter, there being no waiver in the Immigration Act 1971 to regularise the position of illegal entrants²⁰.

The remedies of summary removal of an illegal entrant under the Immigration Act 1971²¹ and deportation²² are not mutually exclusive²³.

A person who does not obtain leave to enter from an authorised officer is an illegal entrant²⁴, and there is power to direct removal when it is discovered that leave to enter was obtained by deception²⁵. There is no time limit on the making of removal directions²⁶. Once the precedent fact of illegal entry is established, the Secretary of State is not required to make factual findings to justify the exercise of his discretion to remove²⁷.

A person seeking asylum, who travels to the United Kingdom under false documents, and who admits their falsity during the journey or immediately on arrival, does not enter or seek to enter fraudulently or clandestinely and is not an illegal entrant²⁸.

1 See the text and note 24 *infra*.

2 As to the meaning of 'United Kingdom' see para 5 note 1 *ante*.

3 For the meaning of 'immigration laws' see para 83 *ante*.

4 See note 5 *infra*. See *R v Secretary of State for the Home Department, ex p Abdul Khaled* [1987] Imm AR 67 (child applicant gained entry without leave through the deception of someone purporting to be his father). A deliberate deception by a third party, even if the person is ignorant of it, designed to secure his entry, makes him an illegal entrant: *R v Secretary of State for the Home Department, ex p Salim* [1990] Imm AR 316 (deception by mother); *Khan v Secretary of State for the Home Department* [1977] 3 All ER 538, [1977] 1 WLR 1466, CA; *R v Immigration Officer, ex p Chan* [1992] 2 All ER 738, [1992] 1 WLR 541, CA; *R v Secretary of State for the Home Department, ex p Sultan Hamid* (6 April 1992, unreported). But see also *R v Secretary of State for the Home Department, ex p Ku* [1995] QB 364, [1995] 2 All ER 891, CA (work permit issued in breach of rules by government official is not invalid but merely inappropriate, and therefore the permit holder is not an illegal entrant, in the absence of impropriety or misrepresentation).

5 Immigration Act 1971 s 33(1) (definition substituted by the Asylum and Immigration Act 1996 s 12(1), Sch 2 para 4; and modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(10)(a)(iii); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7).

6 This constitutes a breach of *ibid* s 3(1)(a) (as amended) (see para 86 *ante*), but the word 'unlawfully' does not imply fault: see *R v Governor of Ashford Remand Centre, ex p Bouzagou* [1983] Imm AR 69, CA; *R v Secretary of State for the Home Department, ex p Mohan* [1989] Imm AR 436; *Mokuolu v Secretary of State for the Home Department* [1989] Imm AR 51, CA; *Rehal v Secretary of State for the Home Department* [1989] Imm AR 576, CA (where the entrants were mistakenly taken to be British citizens); *Re Bamgbose* [1990] Imm AR 135, CA. An immigration officer has a discretion not to treat a person as an illegal entrant in certain circumstances: *R v (Uluyol) v Immigration Officer* [2001] INLR 194 (asylum-seekers concealed in a lorry entered the United Kingdom at a freight-only port, cut their way out of the lorry and approached port officials at the first opportunity).

7 Temporary admission is not leave to enter: see the Immigration Act 1971 s 11(5); and para 87 note 7 *ante*. See also *R v Secretary of State for the Home Department, ex p Mohammed Khan* [1985] Imm AR 104, CA. As to temporary admission generally see para 212 *post*.

8 Immigration Act 1971 s 33(1). A deportation order invalidates any leave to enter or remain granted before it was made or while it is in force: see s 5(1); and para 160 *post*. EEA nationals and others who do not require leave under the Immigration Act 1971 will be illegal entrants if they enter or seek to enter when a deportation order is in force: *Shingara v Secretary of State for the Home Department* [1999] Imm AR 257, CA. As to EEA nationals see para 225 *et seq post*. Deportation from the Channel Islands or the Isle of Man has the same effect as a United Kingdom deportation order: Immigration Act 1971 s 9(1), Sch 4 para 3(1) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2).

9 As to what is a material deception see *Bugdaycay v Secretary of State for the Home Department* [1987] AC 514, [1987] 1 All ER 940, [1987] Imm AR 250, HL. A deception is material if it is likely to influence the immigration officer's decision: *Durojaiye v Secretary of State for the Home Department* [1991] Imm AR 307, CA; *Kaur v Secretary of State for the Home Department* [1998] Imm AR 1, CA.

10 Immigration Act 1971 s 33(1) (as substituted and modified: see note 5 *supra*). Entry by deception occurs: (1) where the entrant makes false representations contrary to s 26(1)(c) (see para 144 *ante*) and they are the effective means of gaining entry (see *Khawaja v Secretary of State for the Home Department* [1984] AC 74, HL); (2) where the entrant enters the United Kingdom by means including deception contrary to the Immigration Act 1971 s 24A (as added) (see para 198 *post*); or (3) where he enters or seeks to enter the United Kingdom by means including deception by another person (see s 33(1) (as substituted and modified) (see the text and notes 4-5 *supra*)). A person is an illegal entrant if he seeks and obtains leave to enter in one capacity while intending to remain (if possible) in another capacity since that amounts to a material deception, and it is irrelevant whether, if the truth had been told, leave would have been granted in the other or a third capacity: *Adesina v Secretary of State for the Home Department* [1988] Imm AR 442, CA (leave to enter sought and granted as a visitor when study in the United Kingdom always intended), following *Bugdaycay v Secretary of State for the Home Department* [1987] AC 514, [1987] 1 All ER 940, [1987] Imm AR 250, HL. See also *R v Secretary of State for the Home Department, ex p Chomsuk* [1991] Imm AR 29 (student intending to work). A person who enters for one purpose while wishing to pursue another purpose, if it becomes possible, can properly be described as intending to pursue that second purpose at the time he seeks entry and is, therefore, an illegal entrant: *R v Secretary of State for the Home Department, ex p Brakwah* [1989] Imm AR 366, DC. The presentation of a passport or entry clearance visa that has been formulated on a basis that no longer subsists, or which no longer represents the totality of the entrant's intentions or possibilities, is deception: *R v Secretary of State for the*

Home Department, ex p Awan [1996] Imm AR 354; *Kaur v Secretary of State for the Home Department* [1998] Imm AR 1, CA.

As to third party deception before the amendment of the definition of 'illegal entrant' in the Immigration Act 1971 see *Khan v Secretary of State for the Home Department* [1977] 3 All ER 538, [1977] 1 WLR 1466, CA (entered on a false passport and was unaware of its details: liable to removal as illegal entrant), distinguished in *R v Secretary of State for the Home Department, ex p Khan (Hiram)* [1990] 2 All ER 531, [1990] 1 WLR 798, [1990] Imm AR 327, CA (original deception practised before 1973, later deceptions after settlement immaterial); *R v Secretary of State for the Home Department, ex p Miah* [1990] 2 All ER 523, [1989] Imm AR 559, CA (knowing deception by minor as to parentage at time of original entry or, alternatively, at time of subsequent entries justified Secretary of State in treating appellant as an illegal entrant); *R v Immigration Officer, ex p Chan* [1992] 2 All ER 738, [1992] 1 WLR 541, CA (illegal entrant when he entered using a work permit obtained by the fraud of a third party, of which the entrant was innocent).

A person who makes no representations either orally or in writing to an entry clearance or immigration officer, but who fails to correct something said on his behalf by someone else (which he may not have known or heard about), cannot be an illegal entrant by deception: *R v Secretary of State for the Home Department, ex p Dordas* [1992] Imm AR 99.

The material date for the deception is the time when any particular declaration or representation is made: *R v Secretary of State for the Home Department, ex p Salim* [1990] Imm AR 316.

11 An immigration officer may however detain on reasonable suspicion of illegal entry: see the Immigration Act 1971 Sch 2 para 16(2) (as substituted); and para 154 ante.

12 *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL. As to the admissibility of affidavits made by immigration officers and entry clearance officers see *R v Secretary of State for the Home Department, ex p Rahman* [1998] QB 136, [1997] 1 All ER 796, CA.

13 *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL; *R v Secretary of State for the Home Department, ex p Chukwudi Obi* [1997] INLR 173. In the absence of any other evidence to prove the grant of leave, this burden can be discharged by showing that the relevant passport stamp is a forgery; it is not necessary for the Secretary of State to go on to demonstrate how admission to the United Kingdom was secured (whether clandestinely or by deception): *R v Secretary of State for the Home Department, ex p Musawwir* [1989] Imm AR 297. As to the Home Office see para 1 ante. As to the Secretary of State see para 2 ante.

14 *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL. For an example of the Secretary of State failing to prove illegal entry status to the requisite standard see *R v Secretary of State for the Home Department, ex p Man Keng Wuan* [1989] Imm AR 501. However, in certain circumstances the court may be willing to infer illegal entry: *R v Secretary of State for the Home Department, ex p Chowdhury* (10 April 1989, unreported), QBD, per Simon Brown J; *R v Secretary of State for the Home Department, ex p Adjebe* (17 July 1989, unreported) per Auld J. The standard of proof laid down in *Khawaja v Secretary of State for the Home Department* supra applies even where the alleged illegal entrant relies upon the provisions of the Immigration Act 1971 s 4(2), Sch 2 para 6(1) (as amended) (deemed leave: see para 148 ante): *R v Secretary of State for the Home Department, ex p Kumar* [1990] Imm AR 265. The court will look at all the evidence up to the date of the hearing (and not simply that available to the Secretary of State when he made the decision): *R v Secretary of State for the Home Department, ex p Muse* [1992] Imm AR 282; *R v Secretary of State for the Home Department, ex p Miah* [1990] 2 All ER 523, [1989] Imm AR 559, CA. As to the standard of proof see CIVIL PROCEDURE vol 11 (2009) PARA 775.

15 *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL. The mere silent presentation of a passport containing false information (eg an entry clearance certificate obtained by deception) may be sufficient to constitute a false representation of a person's intention justifying treating him as an illegal entrant: *R v Secretary of State for the Home Department, ex p Patel* [1986] Imm AR 515, CA (passport obtained by the use of, and itself containing, false information); *R v Secretary of State for the Home Department, ex p Olasebikan* [1986] Imm AR 337 (convicted overstayer recommended for deportation but left voluntarily; returned to the United Kingdom with new passport having changed his name by deed poll and obtained entry without questioning in his new identity; held to be an illegal entrant having obtained entry by deliberate deception by conduct knowing that if the true facts were known he would have been refused entry); *R v Secretary of State for the Home Department, ex p Kwadwo Saffu-Mensah* [1991] Imm AR 43; *Durojaiye v Secretary of State for the Home Department* [1991] Imm AR 307, CA; *R v Secretary of State for the Home Department, ex p Salim* [1990] Imm AR 316; *R v Immigration Officer, ex p Chan* [1992] 2 All ER 738, [1992] 1 WLR 541, CA. See also *R v Secretary of State for the Home Department, ex p Al-Zahrany* [1995] Imm AR 283 (entry by deception established where applicant's husband presented passport on her behalf containing valid visitor's visa but she ultimately intended to claim political asylum); *R v Secretary of State for the Home Department, ex p Kuteesa* [1997] Imm AR 194 (silent presentation of passport endorsed with conditions amounted to representation that conditions had not been breached); *Kaur v Secretary of State for the Home Department* [1998] Imm AR 1, CA (failure to inform immigration officer that sponsor was imprisoned on

suspicion of murder and therefore incapable of supporting applicant amounted to 'false representations'). But failure to disclose a change of circumstances is not necessarily deception; the Secretary of State must prove a fraudulent misrepresentation of what was known to be a material fact: *R v Secretary of State for the Home Department, ex p Doldur* [1998] Imm AR 352, CA.

16 *R v Secretary of State for the Home Department, ex p Lapinid* [1984] 3 All ER 257, [1984] 1 WLR 1269, [1984] Imm AR 101, CA; *R v Secretary of State for the Home Department, ex p Nwanurue* [1992] Imm AR 39; *R v Secretary of State for the Home Department, ex p Kaur* [1991] Imm AR 426, applying *R v Secretary of State for the Home Department, ex p Lapinid* supra even where the Home Office had set the appellate machinery in motion. See, by contrast, *R v Governor of Pentonville Prison, ex p Azam* [1974] AC 18, [1973] 2 All ER 765, HL; *R v Secretary of State for the Home Department, ex p Razak* [1986] Imm AR 44.

17 See the Immigration and Asylum Act 1999 s 69(5); and para 180 post. As to claims for asylum see para 238 et seq post.

18 See *ibid* s 65(1) (as amended); and para 179 post.

19 Ie the date of commencement of the Immigration Act 1971.

20 *R v Secretary of State for the Home Department, ex p Razak* [1986] Imm AR 44; and see the Immigration Act 1971 s 34(1). Although it is the Secretary of State's general policy to grant leave to remain to a person who has been unlawfully in the United Kingdom for a continuous period of at least 14 years, an illegal entrant does not acquire a quasi-right to remain after that period: *Ali v Secretary of State for the Home Department* [1994] Imm AR 489, CA.

21 See the Immigration Act 1971 Sch 2 para 9 (as amended); and para 152 ante.

22 See para 160 post.

23 *R v Immigration Appeal Tribunal, ex p Patel* [1988] AC 910, [1988] 2 All ER 378, [1988] Imm AR 434, HL (Ugandan Asian admitted to the United Kingdom under the special voucher scheme (see para 120 ante); at the time of the application he was unmarried but by the time of the issue of the voucher he had married but this was concealed; held to be an illegal entrant). See also *R v Secretary of State for the Home Department, ex p Nwanurue* [1992] Imm AR 39.

24 *R v Secretary of State for the Home Department, ex p Mohan* [1989] Imm AR 436 (Sri Lankan secured leave to enter the Republic of Ireland and travelled to Fishguard where he was allowed to proceed by a police officer but no leave was stamped in his passport; held to be an illegal entrant since there is no statutory provision for notional or implied authority for a police officer to grant leave to enter).

25 See the Immigration Act 1971 Sch 2 para 9 (as amended); and para 152 ante. See also *R v Secretary of State for the Home Department, ex p Lapinid* [1984] 3 All ER 257, [1984] 1 WLR 269, [1984] Imm AR 104, CA.

26 *R v Secretary of State for the Home Department, ex p Saffu-Mensah* [1992] Imm AR 185, CA.

27 *R v Secretary of State for the Home Department, ex p Kueng* (27 November 1991, unreported), CA. As to the Secretary of State see para 2 ante.

28 *R v Naillie and Kanesarajah* [1993] 2 All ER 782, HL.

UPDATE

151 Illegal entry

NOTE 5--SI 2004/1405 art 7 amended: SI 2007/3579.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(iii) Removal from the United Kingdom/152. Removal of persons refused leave to enter and illegal entrants.

(iii) Removal from the United Kingdom

152. Removal of persons refused leave to enter and illegal entrants.

In general, where a person arriving in the United Kingdom¹ by ship² or aircraft³ is refused leave to enter, an immigration officer may:

- 426 (1) give the captain of the ship or aircraft in which he arrives directions requiring the captain to remove him from the United Kingdom in that ship or aircraft⁴; or
 - 427 (2) give the owners or agents of that ship or aircraft directions requiring them to remove him from the United Kingdom in any ship or aircraft, specified or indicated in the directions, of which they are the owners or agents⁵; or
 - 428 (3) give those owners or agents directions requiring them to make arrangements for his removal from the United Kingdom in any ship or aircraft, specified or indicated in the directions, to a country or territory so specified⁶, being either:
 - 9 9. (a) a country of which he is a national or citizen⁷;
 10. (b) a country or territory in which he has obtained a passport or other document of identity⁸; or
 11. (c) a country or territory in which he embarked for the United Kingdom⁹; or
 12. (d) a country or a territory to which there is reason to believe that he will be admitted¹⁰.
- 10

Where a person arriving in the United Kingdom through the tunnel system¹¹ is refused leave to enter, an immigration officer may give the person operating the international service¹² by which he arrived ('the carrier') directions requiring the carrier to remove him from the United Kingdom through the tunnel system, or to make arrangements for his removal as in head (3) above¹³.

Where a person who despite travelling within the common travel area¹⁴ nonetheless requires leave to enter the United Kingdom¹⁵, or in respect of whom a deportation order¹⁶ is in force, has entered or is seeking to enter the United Kingdom from the Republic of Ireland otherwise than by ship or aircraft and is refused leave to enter on arrival, an immigration officer or the Secretary of State may give the owners or agents of any train, vehicle, ship or aircraft directions¹⁷ requiring them to make arrangements for that person's removal from the United Kingdom in any train, vehicle, ship or aircraft specified or indicated in the direction to a specified country of which he is a national or citizen, or a specified country or territory in which he has obtained a passport or other document of identity, from which he embarked for the United Kingdom, or to which there is reason to believe that he will be admitted¹⁸.

Removal directions may be given more than once¹⁹.

No directions for the removal of a person refused leave to enter the United Kingdom are to be given by the immigration officer after the expiration of two months beginning with the date on which the person was refused leave, unless the immigration officer has within that time given written notice to the owners or agents (or, as the case may be, the carrier) in question of his intention to give directions in respect of that person²⁰.

Where an illegal entrant²¹, including one arriving in the United Kingdom through the tunnel system, is not given leave to enter or remain in the United Kingdom, an immigration officer may give any of the directions set out in heads (1) to (3) above²². However, the time limit of two months does not apply in the case of an illegal entrant²³.

Where it appears to the Secretary of State that directions might be given but that it is not practicable for them to be given or that, if given, they would be ineffective²⁴, or that (in the case of a person refused leave to enter) the time limit of two months has passed without any

directions or notice of intention to give such directions having been given²⁵, or in any case where a person has arrived through the tunnel system²⁶, the Secretary of State may give directions to the owners or agents of any ship or aircraft, or the person operating the international service by which the entrant arrived, requiring them to make removal arrangements²⁷. The costs of complying with such directions must be defrayed by the Secretary of State²⁸.

If a person is to be removed²⁹ from the United Kingdom to a country³⁰ of which he is a national or citizen, but he does not have a valid passport or other document establishing his identity and nationality or citizenship and permitting him to travel, and if the country to which the person is to be removed indicates that he will not be admitted to it without identification data³¹, the Secretary of State may provide such data³², but he must not disclose whether the person concerned has made a claim for asylum³³.

A person in respect of whom removal directions are given may be placed, under the authority of an immigration officer, on board any ship or aircraft or through train or shuttle train³⁴ in which he is to be removed in accordance with the directions³⁵. Directions for the removal of a person from the United Kingdom may include or may be amended to include provision for the person to be accompanied by an escort consisting of one or more persons specified in the directions³⁶.

It is an offence for a captain of a ship or aircraft, or a train manager of a through or shuttle train, to fail without reasonable excuse to comply with any directions³⁷ for a person's removal from the United Kingdom³⁸, or knowingly to permit a person to disembark or leave the train when required to prevent it³⁹.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 For the meaning of 'ship' see para 87 note 2 ante.

3 As to the meaning of 'aircraft' see para 87 note 3 ante.

4 Immigration Act 1971 s 4, Sch 2 para 8(1)(a). For the meaning of 'captain' see para 87 note 1 ante. Expenses incurred by the Secretary of State in connection with the removal of any person under Sch 2 (as amended), the departure of such a person with his dependants, or his or their maintenance pending departure, are to be defrayed out of money provided by Parliament: s 31(b). As to the Secretary of State see para 2 ante.

The issue of removal directions is a decision relating to a person's entitlement to enter or remain in the United Kingdom for the purposes of the Immigration and Asylum Act 1999 s 65(1) (as amended) (right of appeal on human rights grounds: see para 179 post): *R (on the application of Kariharan) v Secretary of State for the Home Department*, *R (on the application of Kumarakuruparan) v Secretary of State for the Home Department* [2002] EWCA 1102.

5 Ibid Sch 2 para 8(1)(b).

6 Ibid Sch 2 para 8(1)(c). The Secretary of State may exercise these powers in relation to a person who has claimed asylum, made a human rights allegation, or sought leave to enter outside the Immigration Rules: s 3A(7)-(9) (added by the Immigration and Asylum Act 1999 s 1); Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 3. The directions are not valid unless they clearly indicate that the person specified is to be removed, not merely that he might be required to be removed: *R v Immigration Officer, ex p Shah* [1982] 2 All ER 264, [1982] 1 WLR 544. For the purposes of head (d) in the text, an immigration officer does not need to show that the person will be admitted for settlement in the country to which he is to be sent: *Alsawaf v Secretary of State for the Home Department* [1988] Imm AR 410, CA. If there is no evidence that admission is likely to be granted, the immigration officer may not remove a person on the basis that he ought to be admitted there: *R v Secretary of State for the Home Department, ex p Yassine* [1990] Imm AR 354. As to the Secretary of State see para 2 ante. As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).

7 Immigration Act 1971 Sch 2 para 8(1)(c)(i).

8 Ibid Sch 2 para 8(1)(c)(ii).

9 Ibid Sch 2 para 8(1)(c)(iii). As to the removal of asylum claimants under this provision see para 241 post.

10 Ibid Sch 2 para 8(1)(c)(iv). As to the removal of asylum claimants under this provision see para 241 post.

11 For the meaning of 'tunnel system' see para 196 note 3 post.

12 For the meaning of 'international service' see para 87 note 1 ante.

13 Immigration Act 1971 Sch 2 para 8(1) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(h); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). Where a person seeking to arrive in the United Kingdom through the tunnel system is refused leave to enter while in a control zone in France or Belgium, the immigration officer may give the Concessionaires directions requiring them to secure that the person is taken out of the control zone to a place where he may be accepted back by the competent French or Belgian authorities as provided in the Channel Tunnel (International Arrangements) Order, SI 1993/1813, art 2(3), Sch 2 Pt II art 18: Immigration Act 1971 Sch 2 para 8(1A) (added for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(11)(i); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). For the meaning of 'control zone' see para 93 note 5 ante.

14 As to the common travel area see para 94 ante.

15 Ie by virtue of the Immigration Act 1971 s 9(4) (as amended) (see para 94 ante) or by virtue of the Immigration (Control of Entry through Republic of Ireland) Order 1972, SI 1972/1610, art 3 (see para 94 ante).

16 As to deportation see para 160 et seq post.

17 The cost of complying with any such directions is defrayed by the Secretary of State: Immigration Act 1971 Sch 2 para 8(2) (Sch 2 para 8 substituted, for these purposes, by the Immigration (Entry Otherwise than by Sea or Air) Order 2002, SI 2002/1832, arts 2, 3, Schedule paras 1, 2).

18 Immigration Act 1971 Sch 2 para 8(1) (as substituted: see note 17 supra).

19 *Erdogan* (24 June 1986, unreported), QBD, per Nolan J. Removal directions are frequently cancelled pending consideration of further representations or judicial review. But fresh removal directions do not automatically generate new appeal rights: see *R v Secretary of State for the Home Department, ex p Onibiyo* [1996] QB 768, [1996] 2 All ER 901, CA. In addition, advance notice of removal directions may be given.

20 Immigration Act 1971 Sch 2 para 8(2) (amended by the Immigration Act 1988 s 10, Schedule para 9(1); modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(11)(j); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7)). In calculating the period of two months, any time during which an appeal under the Immigration and Asylum Act 1999 s 59, s 67 or s 69(1) is pending is to be disregarded: Immigration Act 1971 Sch 4 Pt II para 13. Removal directions may not be made while an appeal is pending, and any directions already given cease to have effect except in so far as they are already carried out: see Sch 4 para 10 (as amended); and *R v Immigration Appeal Tribunal, ex p Alghali* [1984] Imm AR 106. Any period during which there is an appeal pending to the Special Immigration Appeals Commissioner is also disregarded: Special Immigration Appeals Commission Act 1997 Sch 2 para 3A (added by the Immigration and Asylum Act 1999 Sch 14 paras 118, 126). The two months time limit restricts the power of immigration officers, but thereafter the Secretary of State may himself give removal directions to the same effect: see the Immigration Act 1971 Sch 2 para 10(1)(b) (as amended); and the text and note 27 infra. See also *Singh v Secretary of State for the Home Department* [1989] Imm AR 469, CA (removal directions given by an immigration officer lapse in every sense after two months, leaving him with no power to issue new or varied directions; any new directions must be issued by the Secretary of State).

21 For the meaning of 'illegal entrant' see para 151 ante.

22 See the Immigration Act 1971 Sch 2 para 9(1) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(11)(k); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7)). The Secretary of State may exercise these powers in relation to a person who has claimed asylum, made a human rights allegation, or sought leave to enter outside the Immigration Rules (Immigration Act 1971 s 3A(7)-(9) (added by the Immigration and Asylum Act 1999 s 1); Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 3); or in relation to a person who despite travelling within the common travel area requires leave to enter the United Kingdom (ie by virtue of the Immigration Act 1971 s 9(4) (as amended) (see para 94 ante) or by virtue of the Immigration (Control of Entry through Republic of Ireland) Order 1972, SI 1972/1610, art 3 (see para 94 ante)), or in relation to a person in respect of whom a deportation order is in force, who has entered or is seeking to enter the United Kingdom from the Republic of Ireland otherwise than by ship or aircraft (see the

Immigration Act 1971 Sch 2 para 9(1) (modified, for these purposes, by the Immigration (Entry Otherwise than by Sea or Air) Order 2002, SI 2002/1832, arts 2, 3, Schedule paras 1, 3)).

Leave to enter which was obtained by deception is disregarded for these purposes: Immigration Act 1971 Sch 2 para 9(2) (added by the Asylum and Immigration Act 1996 Sch 2 para 6).

23 *R v Secretary of State for the Home Department, ex p Mohan* [1989] Imm AR 436; *Gulfiraz* (19 March 1990, unreported).

24 Immigration Act 1971 Sch 2 para 10(1)(a) (Sch 2 para 10(1) amended by the Immigration Act 1988 s 10, Schedule para 9; and modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(11)(l); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7).

25 Ie the requirements under the Immigration Act 1971 Sch 2 para 8(2) (see the text and note 20 supra) have not been complied with: see Sch 2 para 10(1)(b) (as amended and modified: see note 24 supra).

26 Ibid Sch 2 para 10(1) (as amended and modified: see note 24 supra).

27 Ibid Sch 2 para 10(1) (as amended and modified: see note 24 supra). Alternatively, the Secretary of State may give directions for removal, in accordance with arrangements to be made by himself, to any country or territory to which the person could be removed under head (3) in the text: Sch 2 para 10(2). See also *Rahman v Secretary of State for the Home Department* [1995] Imm AR 488, CA (directions for removal given under the Immigration Act 1971 Sch 2 para 10 (as amended) in respect of an illegal entrant who had entered using a false passport, where deception was not discovered until eight years later).

Schedule 2 para 10 (as amended) applies to persons liable to removal under the Immigration and Asylum Act 1999 s 10 (see para 154 post): see s 10(7). For similar provisions in relation to members of the crew of a ship or aircraft see the Immigration Act 1971 Sch 2 para 14; and para 153 post.

The power to give directions under Sch 2 paras 10, 14 includes the power to revoke or vary them: s 32(1). As to proof of these directions see para 86 note 15 ante.

28 Ibid Sch 2 para 10(3). As to the repayment of expenses of the Secretary of State see para 159 post.

29 'Removed' means removed as a result of directions given under the Immigration and Asylum Act 1999 s 10 (see para 154 post) or the Immigration Act 1971 Sch 2 or Sch 3 (see para 160 et seq post): Immigration and Asylum Act 1999 s 13(6).

30 As to the meaning of 'country' see para 204 note 19 ante.

31 'Identification data' means fingerprints taken under the Immigration and Asylum Act 1999 s 141 (see para 150 post) or data collected in accordance with regulations made under s 144 (see para 150 post): s 13(5).

32 Ibid s 13(1), (2). For the purposes of the Data Protection Act 1998 s 4(3), Sch 4(1) (see CONFIDENCE AND DATA PROTECTION), the provision of identification data is a transfer of personal data which is necessary for reasons of substantial public interest: Immigration and Asylum Act 1999 s 13(4).

33 Ibid s 13(3). As to claims for asylum see para 238 et seq post.

34 For the meaning of 'through train' see para 87 note 4 ante. For the meaning of 'shuttle train' see para 87 note 5 ante.

35 Immigration Act 1971 Sch 2 paras 11, 15 (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(11)(m), (o); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). A person who despite travelling within the common travel area requires leave to enter the United Kingdom (ie by virtue of the Immigration Act 1971 s 9(4) (as amended) (see para 94 ante) or by virtue of the Immigration (Control of Entry through Republic of Ireland) Order 1972, SI 1972/1610, art 3 (see para 94 ante)), or in respect of whom a deportation order is in force, who has entered or is seeking to enter the United Kingdom from the Republic of Ireland otherwise than by ship or aircraft, may alternatively be placed on board any train or other vehicle: Immigration Act 1971 Sch 2 para 9(1) (modified, for these purposes, by the Immigration (Entry Otherwise than by Sea or Air) Order 2002, SI 2002/1832, arts 2, 3, Schedule paras 1, 4).

The captain of a ship or aircraft, or train manager, must, at the request of an immigration officer, prevent any person placed on board under the Immigration Act 1971 Sch 2 para 11 or Sch 2 para 15 from disembarking or leaving the train in the United Kingdom, or before directions for his removal have been fulfilled, and for that purpose may detain him in custody on board the ship or aircraft or train: Sch 2 para 16(4), (5) (Sch 2 para 16 modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(11)(p); and the Channel Tunnel

(Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). For the meaning of 'train manager' see para 87 note 1 ante.

36 Immigration and Asylum Act 1999 s 14(1). The Secretary of State may, by regulations, make further provision: (1) requiring the person to whom the directions are given to arrange for the return of the escort to the United Kingdom; (2) requiring him to bear such costs in connection with the escort (including in particular remuneration) as may be prescribed; (3) as to the cases in which the Secretary of State is to bear those costs; and (4) prescribing the kinds of expenditure which count in calculating escorts' costs: s 14(2), (3). At the date at which this volume states the law no such regulations had been made. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

37 le under the Immigration Act 1971 Schs 2, 3 or under the Immigration and Asylum Act 1999.

38 See the Immigration Act 1971 s 27(a)(ii) (s 27(a) modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(9); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7).

39 Immigration Act 1971 s 27(a)(i) (as modified: see note 38 supra). There are equivalent offences for owners or agents of ships or aircraft or agents of persons operating international train services: see s 27(b) (as modified); and paras 197-202 post. All are summary offences punishable with a fine of not more than level 5 on the standard scale or six months' imprisonment: s 27. As to the standard scale see para 81 note 2 ante.

UPDATE

152 Removal of persons refused leave to enter and illegal entrants

TEXT AND NOTES 1-28--Where directions are given in respect of a person under the 1971 Act Sch 2 paras 8-10, directions to the same effect may be given under that provision in respect of a member of the person's family: Sch 2 para 10A (added by the Nationality, Immigration and Asylum Act 2002 s 73(1)).

NOTES 15, 20, 22, 24, 35, 38--SI 2004/1405 art 7 amended: SI 2007/3579.

TEXT AND NOTES 20, 25--Any period during which an appeal by the person under the Immigration Acts is pending must be ignored: 1971 Act Sch 2 para 8(2) (amended by the 2002 Act Sch 7 para 4).

TEXT AND NOTES 21, 22--See *R (on the application of Anton) v Secretary of State for the Home Department; Re Anton* [2005] EWHC 2730/2731 (Admin/Fam), [2005] 2 FLR 818 (Secretary of State issued removal directions in respect of ward of court; power to grant injunction restraining removal resided with the Administrative Court, and not the Family Division).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(iii) Removal from the United Kingdom/153. Removal of seamen and aircrews.

153. Removal of seamen and aircrews.

Where a non-British citizen¹ arrives in the United Kingdom² for the purposes of joining a ship or aircraft³ as a member of a crew⁴ and, having been given limited leave to enter by an immigration officer⁵, remains beyond the time limited by that leave or is reasonably suspected by an immigration officer of intending to do so, an immigration officer may⁶:

- 429 (1) give the captain⁷ of that ship or aircraft directions requiring the captain to remove him from the United Kingdom in that ship or aircraft⁸;

430 (2) give the owners or agents of that ship or aircraft directions requiring them to remove him from the United Kingdom in any ship or aircraft specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents⁹;

431 (3) give those owners or agents directions requiring them to make arrangements for his removal from the United Kingdom in any ship or aircraft specified or indicated in the directions to a country or territory so specified¹⁰, being either:

11

13. (a) a country of which he is a national or citizen¹¹;

14. (b) a country or territory in which he has obtained a passport or other document of identity¹²; or

15. (c) a country or territory in which he embarked¹³ for the United Kingdom¹⁴; or

16. (d) a country or territory where he was engaged as a member of the crew of the ship or aircraft which he arrived in the United Kingdom to join¹⁵;

17. (e) a country or a territory to which there is reason to believe that he will be admitted¹⁶.

12

Where a non-British citizen has arrived in the United Kingdom¹⁷ as a member of the crew of a ship or aircraft or of a through train or shuttle train¹⁸ and has either lawfully entered without leave¹⁹ or been given limited leave²⁰, and who in either case remains beyond the time allowed or limited by the leave granted, or, in the case of a member of the crew of a ship or aircraft, is reasonably suspected by an immigration officer of intending to do so²¹, an immigration officer may:

432 (i) give the captain of that ship or aircraft or the train manager²² of the train directions requiring the captain or train manager to remove him from the United Kingdom in that ship, aircraft or train²³;

433 (ii) give the owners or agents of that ship or aircraft or the person operating the international service²⁴ on which that train is engaged directions requiring them to remove him from the United Kingdom in any ship, aircraft or train specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents or a train engaged on that international service²⁵;

434 (iii) give those owners or agents or that operator directions requiring them to make arrangements for his removal from the United Kingdom in any ship, aircraft or through train or shuttle train specified or indicated in the directions to a country or territory so specified²⁶, being:

13

18. (A) a country of which he is a national or citizen²⁷;

19. (B) a country or territory in which he has obtained a passport or other document of identity²⁸;

20. (C) a country or territory in which he embarked or departed for the United Kingdom²⁹;

21. (D) a country or territory in which he was engaged as a member of the crew of the ship, aircraft or through train or shuttle train in which he arrived in the United Kingdom³⁰; or

22. (E) a country or a territory to which there is reason to believe that he will be admitted³¹.

14

1 See para 84 ante.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 As to the meaning of 'ship' see para 87 note 2 ante. As to the meaning of 'aircraft' see para 87 note 3 ante.

- 4 For the meaning of 'crew' see para 87 note 1 ante.
- 5 le as mentioned in the Immigration Act 1971 s 4(2), Sch 2 para 12(1): see para 143 ante.
- 6 Ibid Sch 2 para 12(2) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2).
- 7 For the meaning of 'captain' see para 87 note 1 ante.
- 8 Immigration Act 1971 Sch 2 para 12(2)(a).
- 9 Ibid Sch 2 para 12(2)(b). Expenses incurred by the Secretary of State in connection with the removal of any person under Sch 2 (as amended), the departure of such a person with his dependants, or his or their maintenance pending departure, are to be defrayed out of money provided by Parliament: s 31(b). As to the Secretary of State see para 2 ante.
- 10 Ibid Sch 2 para 12(2)(c). Where it appears to the Secretary of State that directions might be given in respect of a person under Sch 2 paras 12, 13 (both as amended) but that it is not practicable for them to be given or that, if given, that they would be ineffective, then the Secretary of State may give to the owners or agents of any ship or aircraft any such directions in respect of that person as are authorised by Sch 2 para 12(2)(c) or Sch 2 para 13(2)(c) (see the text and notes 11-31 *infra*): Sch 2 para 14(1). Where the Secretary of State may give such directions for a person's removal, he may instead give directions for that person's removal in accordance with arrangements to be made by the Secretary of State to any country or territory to which he could be removed under Sch 2 para 14(1): Sch 2 para 14(2). The costs of complying with any directions given under Sch 2 para 14 are to be defrayed by the Secretary of State: Sch 2 para 14(3).
- 11 Ibid Sch 2 para 12(2)(c)(i).
- 12 Ibid Sch 2 para 12(2)(c)(ii).
- 13 For the meaning of 'embark' see para 93 note 1 ante.
- 14 Immigration Act 1971 Sch 2 para 12(2)(c)(iii).
- 15 Ibid Sch 2 para 12(2)(c)(iv).
- 16 Ibid Sch 2 para 12(2)(c)(v).
- 17 See para 87 ante.
- 18 For the meaning of 'through train' see para 87 note 4 ante. For the meaning of 'shuttle train' see para 87 note 5 ante.
- 19 See para 86 ante.
- 20 See para 86 ante.
- 21 Immigration Act 1971 Sch 2 para 13(2)(A), (B) (Sch 2 para 13(2) amended by the British Nationality Act 1981 Sch 4 para 2; and modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(n); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7).
- 22 For the meaning of 'train manager' see para 87 note 1 ante.
- 23 Immigration Act 1971 Sch 2 para 13(2)(a) (as modified: see note 21 *supra*).
- 24 For the meaning of 'international service' see para 87 note 1 ante.
- 25 Immigration Act 1971 Sch 2 para 13(2)(b) (as modified: see note 21 *supra*).
- 26 Ibid Sch 2 para 13(2)(c) (as modified: see note 21 *supra*).
- 27 Ibid Sch 2 para 13(2)(c)(i) (as modified: see note 21 *supra*).
- 28 Ibid Sch 2 para 13(2)(c)(ii) (as modified: see note 21 *supra*).
- 29 Ibid Sch 2 para 13(2)(c)(iii) (as modified: see note 21 *supra*).

30 Ibid Sch 2 para 13(2)(c)(iv) (as modified: see note 21 supra).

31 Ibid Sch 2 para 13(2)(c)(v) (as modified: see note 21 supra).

UPDATE

153 Removal of seamen and aircrews

NOTE 21--SI 2004/1405 art 7 amended: SI 2007/3579.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(iii) Removal from the United Kingdom/154. Removal of certain persons unlawfully in the United Kingdom.

154. Removal of certain persons unlawfully in the United Kingdom.

A person who is not a British citizen may be removed from the United Kingdom¹ in accordance with directions given by an immigration officer if: (1) he does not observe a condition attached to a limited leave² or remains beyond the time limited by the leave; (2) he has obtained the leave to remain by deception³; or (3) directions have been given for the removal under head (1) or head (2) above of a person to whose family he belongs⁴.

A Commonwealth or Irish citizen who was such a citizen on 1 January 1973 and was then ordinarily resident in the United Kingdom is not liable to removal if at the time of the decision he had been ordinarily resident for the last five years in the United Kingdom and Islands⁵.

Before directions for removal under the Immigration and Asylum Act 1999 are given, regard must be had to any compassionate circumstances of the case, taking into account all the relevant factors known to the Secretary of State⁶. Where family members are being removed, the factors relevant to the deportation of family members are also taken into account⁷. No one may be removed if his removal would be contrary to the United Kingdom's obligations under the Convention relating to the Status of Refugees and its Protocol⁸, or under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)⁹.

There is no right of appeal against the making of directions for removal except on asylum, human rights or race discrimination grounds¹⁰.

Directions to remove an individual may be given to persons falling within a prescribed class¹¹ comprising owners and agents of ships and aircraft, captains of ships and aircraft about to leave the United Kingdom and persons operating an international service¹², and may impose prescribed requirements for the removal¹³.

If there are reasonable grounds for suspecting that a person is someone in respect of whom removal directions may be given that person may be detained under the authority of an immigration officer pending a decision whether or not to give such directions or his removal in pursuance of such directions¹⁴. A person liable to be detained under this power may on the written authority of an immigration officer be temporarily admitted to the United Kingdom or be released from detention¹⁵. He can also apply to an adjudicator for bail¹⁶.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante. As to British citizens and citizenship see paras 8, 23-43 ante.

2 Conditions which may be attached to limited leave may restrict or prohibit employment, preclude recourse to public funds for maintenance or accommodation, or require registration with police: see the Immigration Act

1971 s 3(1)(c); and para 86 ante. Past breaches may found liability for removal: *Sabir v Secretary of State for the Home Department* [1993] Imm AR 477.

A person who has applied to the Secretary of State within the period of his limited leave for further leave to remain in the United Kingdom does not become an overstayer on expiry of the limited leave if no decision has been taken on the application, since his leave is deemed extended until receipt of the decision on the application and the time limit for appealing and, if an appeal is lodged, statutory leave continues pending appeal on the same conditions: Immigration Act 1971 s 3C (added by the Immigration and Asylum Act 1999 s 3); Immigration and Asylum Act 1999 s 58(2)-(4), Sch 4 para 17(1). As to appeals see paras 173-195 post. As to the Secretary of State see para 2 ante.

Breach of conditions or overstaying is a jurisdictional fact and the Secretary of State must prove the facts relied on, but a person claiming to have been granted leave orally by virtue of the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 8(3) (see para 148 ante) must prove the date and manner of his entry to the United Kingdom: art 11.

While all breaches give rise to liability, it may be unlawful for the Secretary of State to remove for a trivial breach which is normally condoned: see *R v Secretary of State for the Home Department, ex p Amoa* [1992] Imm AR 218; *R v Secretary of State for the Home Department, ex p Ajayi* (12 May 1994) Lexis, Enggen Library, Cases File.

3 For the meaning of 'deception' see para 151 notes 9-10 ante.

4 Immigration and Asylum Act 1999 s 10; Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') paras 395A, 395B (paras 395A-395F added by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 67). Directions may not be given under head (1) in the text if the person concerned had before 2 October 2000 made an application for leave to remain in accordance with the Immigration (Regularisation Period for Overstayers) Regulations 2000, SI 2000/265 (see para 160 note 10 post); Immigration and Asylum Act 1999 s 10(2). Directions may not be given under head (3) in the text unless the Secretary of State has given the person concerned written notice, not more than eight weeks after the other person left the United Kingdom in accordance with the first directions, that he intends to remove him from the United Kingdom: s 10(3). If such a notice is sent by the Secretary of State by first class post, addressed to the last known address of the person concerned, it is to be taken to have been received by that person on the second day after the day on which it was posted: s 10(4). Directions for the removal of a person under head (3) in the text cease to have effect if he ceases to belong to the family of the other person: s 10(5). The costs of complying with a direction given under s 10 (so far as reasonably incurred) must be met by the Secretary of State: s 10(9).

The issue of removal directions is a decision relating to a person's entitlement to enter or remain in the United Kingdom for the purposes of s 65 (as amended) (see para 179 post), and give rise to an appeal on human rights grounds: *R (on the application of Kariharan) v Secretary of State for the Home Department*, *R (on the application of Kumarakuruparan) v Secretary of State for the Home Department* [2002] EWCA 1102.

Directions for the removal of a person under the Immigration and Asylum Act 1999 s 10 invalidate any leave to enter or remain in the United Kingdom given to him before the directions are given or while they are in force: s 10(8). When directions for a person's removal have been given, a notice must be given to the person concerned informing him of the decision: Immigration Rules para 395E (as so added). Following the issue of such a notice an immigration officer may authorise the person's detention or make an order restricting him as to residence, employment or occupation and requiring him to report to the police pending the removal: Immigration Rules para 395F (as so added).

Expenses incurred by the Secretary of State in connection with the removal of any person under the Immigration Act 1971 Sch 2 (as amended), the departure of such a person with his dependants, or his or their maintenance pending departure, are to be defrayed out of money provided by Parliament: s 31(b).

5 Ibid s 7(1)(b) (amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 46(b)). See further para 162 post. The date referred to in the text is the date of commencement of the Immigration Act 1971: see para 83 note 2 ante. As to Commonwealth citizens see para 11 ante. For the meaning of 'United Kingdom and Islands' see para 83 note 12 ante.

6 Immigration Rules para 395C (as added: see note 4 supra). Prior to 2 October 2000 persons who had breached conditions or had remained beyond the time limited by their leave, and their family members, were subject to deportation under the Immigration Act 1971 s 3(5)(a) (as originally enacted) (see para 160 post), and the relevant factors to be taken into account by the Secretary of State, listed in the Immigration Rules para 364 (as amended) (and, in the case of family members, the Immigration Rules paras 365-368) are those considered in deportation cases: see paras 160-166 post.

As to Home Office policy see *R v Secretary of State for the Home Department, ex p Ofori* [1995] Imm AR 34; *Musah v Secretary of State for the Home Department* [1995] Imm AR 236; *R v Secretary of State for the Home Department, ex p Popatia* [2000] INLR 587.

- 7 See the Immigration Rules para 395C (as added: see note 4 supra); and note 6 supra.
- 8 See the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906).
- 9 See the Immigration Rules para 395D (as added: see note 4 supra). As to the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 122 et seq. See also para 160 note 40 post.
- 10 See paras 179-180 post.
- 11 Immigration and Asylum Act 1999 s 10(6)(a).
- 12 Immigration (Removal Directions) Regulations 2000, SI 2000/2243, reg 3. For the meaning of 'international service' see para 87 note 1 ante.
- 13 Immigration and Asylum Act 1999 s 10(6)(b). 'Prescribed' means prescribed by regulations made by the Secretary of State: s 167(1). The following requirements are prescribed: (1) in a case where directions are given to the captain of a ship or aircraft about to leave the United Kingdom, a requirement to remove the relevant person from the United Kingdom in that ship or aircraft (Immigration (Removal Directions) Regulations 2000, SI 2000/2243, reg 4(1)(a)); (2) in a case where directions are given to a person operating an international service, a requirement to make arrangements to remove the relevant person through the tunnel system (if he arrived in the United Kingdom through the tunnel system) (reg 4(1)(b), (3)); (3) in a case where directions are given to any other person falling within a class prescribed in reg 3 (see the text and note 12 supra), a requirement to make arrangements for the removal of the relevant person in a ship or aircraft specified or indicated in the directions (reg 4(1)(c)); and (4) in all cases, a requirement to remove the relevant person in accordance with arrangements to be made by an immigration officer (reg 4(1)(d)). The directions must specify that the relevant person is to be removed to a country or territory of which he is a national or citizen, or a country to which there is reason to believe that he will be admitted (see the text and note 4 supra): reg 4(2). As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante. For the meaning of 'tunnel system' see para 196 note 3 post.
- 14 See the Immigration and Asylum Act 1999 s 10(7); the Immigration Act 1971 Sch 2 para 16(2) (substituted by the Immigration and Asylum Act 1999 s 140(1)); and para 156 post.
- 15 See the Immigration and Asylum Act 1999 s 10(7); the Immigration Act 1971 Sch 2 para 21(1); and para 156 post.
- 16 See the Immigration and Asylum Act 1999 s 10(7); the Immigration Act 1971 Sch 2 para 22(1)(b); and para 156 post.

UPDATE

154 Removal of certain persons unlawfully in the United Kingdom

TEXT AND NOTES 1-4--Now, head (2) he uses deception in seeking, whether successfully or not, leave to remain: 1999 Act s 10(1)(b) (substituted by the Nationality, Immigration and Asylum Act 2002 s 74). Add head (2A) his indefinite leave to enter or remain has been revoked under the 2002 Act s 76(3) (see PARA 86): 1999 Act s 10(1)(ba) (added by the 2002 Act s 76(7)).

Decisions made under the 1999 Act s 10 are subject to out-of-country appeals: *R (on the application of RK (Nepal)) v Secretary of State for the Home Department* [2009] EWCA Civ 359, [2009] All ER (D) 226 (Apr). A person may be removed pursuant to the Immigration and Asylum Act 1999 s 10(1)(b) if he used deception in a previous application for leave to remain, even though he did not use deception in seeking his current leave to remain: *R (on the application of Alapati) v Secretary of State for the Home Department* [2009] All ER (D) 275 (Nov).

NOTE 2--1971 Act s 3C amended: Immigration, Asylum and Nationality Act 2006 s 11(1)-(4). See further 1971 Act s 3D (added by 2006 Act s 11(5)) (continuation of leave following revocation). See also 2006 Act s 47 (removal: persons with statutorily extended leave).

NOTE 4--1999 Act s 10(3)-(5) now s 10(3)-(5A) (substituted by 2002 Act s 73(4)). Directions for the removal of a person may not be given under head (3) unless the Secretary of State has given the person written notice of the intention to remove him: 1999 Act s 10(3). Such a notice may not be given if the person whose removal under heads (1) or (2) is the cause of the proposed directions under head (3) has left the United Kingdom, and more than 8 weeks have elapsed since that person's departure: s 10(4). If a notice under s 10(3) is sent by first class post to a person's last known address, that provision is to be taken to be satisfied at the end of the second day after the day of posting: s 10(5). Directions for the removal of a person under head (3) cease to have effect if he ceases to belong to the family of the person whose removal under heads (1) or (2) is the cause of the directions under head (3): s 10(5A). A person is not liable to removal from the United Kingdom under s 10 at a time when s 7(1)(b) (see TEXT AND NOTE 5) would prevent a decision to deport him: s 10(10) (added by 2002 Act s 75(4)).

When a person is notified that a decision has been made to remove him in accordance with the 1999 Act s 10, the notification invalidates any leave to enter or remain in the United Kingdom previously given to him: s 10(8) (substituted by Immigration, Asylum and Nationality Act 2006 s 48).

A person given notice of a decision for his removal must also be informed of any right of appeal: Immigration Rules para 395E (substituted by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 22).

TEXT AND NOTE 5--1971 Act s 7(1)(b) substituted: see PARA 162.

TEXT AND NOTE 6--Words 'any compassionate ... account' omitted: Immigration Rules para 395C (substituted by Statement of Changes in Immigration Rules (Cm 6339) (2004) para 21; and amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1337) para 3).

TEXT AND NOTE 7--There is a duty to take these factors into account: Immigration Rules para 395C (see TEXT AND NOTE 6).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(iii) Removal from the United Kingdom/155. Removal of persons who have relatives settled in the United Kingdom.

155. Removal of persons who have relatives settled in the United Kingdom.

Where a marriage or a relationship is established with a person settled in the United Kingdom¹, or children are born, at a time when a person has no existing leave to remain, there is no provision within the Immigration Rules² permitting regularisation of stay on the basis of the relationship or the children. However, it remains a highly relevant factor in any decision to remove a person from the United Kingdom. Home Office policy determines circumstances in which removal will not take place and leave to remain may be granted outside the scope of the Immigration Rules so as to give effect to the United Kingdom's obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)³. Failure to apply the policy properly or at all may ground judicial review of a decision to remove⁴ and is a relevant consideration in any appeal⁵.

1 As to settlement see paras 134-135 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).

3 le the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969). The policies have been held to be compatible with art 8, breach of which the European Court of Human Rights is strongly disposed to find whenever the effect of an immigration decision is to separate a parent from his child: see *Gangadeen v Secretary of State for the Home Department* [1998] Imm AR 106, [1998] 2 FCR 96, CA; *R (on the application of Mahmood) v Secretary of State for the Home Department* [2001] 1 WLR 840, CA; *R v Secretary of State for the Home Department, ex p Isiko* [2001] INLR 175, CA. If the person removed has a contact order in relation to a child who remains in the United Kingdom, he may subsequently apply for leave to enter to exercise his contact rights, and may thereafter qualify for indefinite leave to remain: see the Immigration Rules paras 246-248D (paras 246 substituted, and paras 248A-248D added, by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 53).

4 *R v Secretary of State for the Home Department, ex p Amankwah* [1994] Imm AR 240; *Iye v Secretary of State for the Home Department* [1994] Imm AR 63, CA; but see also *Secretary of State for the Home Department v Hastrup* [1996] Imm AR 616, CA (Secretary of State may depart from the policy in specific cases provided he gives reasons for so doing).

5 As to such appeals see the Immigration and Asylum Act 1999 s 65; and para 179 post. There may also be cases where too strict an application of the Immigration Rules or policy gives rise to a breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950): *R v Secretary of State for the Home Department, ex p Arman Ali* [2000] Imm AR 134 (interpretation of the rules relating to maintenance and accommodation which would exclude family members even though in practice there would be no recourse to public funds may violate the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 8).

UPDATE

155 Removal of persons who have relatives settled in the United Kingdom

TEXT AND NOTES--See *Balamurali v Secretary of State for the Home Department* [2003] EWCA Civ 1806, [2003] All ER (D) 250 (Dec).

NOTE 3--Delay in the determination of an application for asylum can be relevant in terms of the fairness of the immigration system, the deeper personal and social ties which the applicant is likely to develop during the course of the delay, and the reduction in the expectation of removal: *EB (Kosovo) v Secretary of State for the Home Department* [2008] UKHL 41, [2009] 1 AC 1159, [2008] 4 All ER 28. See also *Akaeke v Secretary of State for the Home Department* [2005] EWCA Civ 947, [2005] All ER (D) 409 (Jul) (unmeritorious asylum claim; unreasonable delay in deciding application; applicant marrying after entry into United Kingdom; if removed applicant's subsequent application for entry clearance would probably succeed; removal of applicant would be disproportionate). Differential treatment between children who are, and those who are not, living with a parent can amount to unlawful discrimination: *R (on the application of A) v Secretary of State for the Home Department* [2008] EWHC 2844 (Admin), [2009] 2 FCR 38.

NOTE 4--See also *R (on the application of Mwangi) v Secretary of State for the Home Department* [2008] EWHC 3130 (Admin), [2009] 3 FCR 303.

NOTE 5--See *NF (Ghana) v Secretary of State for the Home Department* [2008] EWCA Civ 906, [2008] All ER (D) 409 (Jul) (tribunal failed to give proper regard to the nature of the policy discretion to be exercised).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(iv) Detention/156. Detention of persons liable to examination and removal.

(iv) Detention

156. Detention of persons liable to examination and removal.

A person liable to examination on entry¹ may be detained under the authority of an immigration officer pending his examination and pending a decision to give or refuse him leave to enter the United Kingdom². A person whose leave to enter has been suspended³ may be detained under the authority of an immigration officer pending completion of his examination, and a decision on whether to cancel his leave to enter⁴. If there are reasonable grounds for suspecting that a person is someone in respect of whom directions for removal may be given⁵, that person may be detained under the authority of an immigration officer pending a decision whether or not to give such directions or his removal in pursuance of, or the taking of any action in respect of him required by, such directions⁶. This power extends to persons on board a ship⁷ or aircraft⁸, or in a vehicle in a control zone⁹, or on a train or vehicle which has entered the United Kingdom through the tunnel system¹⁰ who may, under the authority of an immigration officer, be removed from the ship, aircraft, vehicle or train for detention¹¹. If an immigration officer so requires, the captain¹² or train manager¹³ must prevent from disembarking¹⁴ or leaving the train any person who has arrived in the United Kingdom in the ship, aircraft, train or vehicle and been refused leave to enter, and the captain or train manager may for that purpose detain the person in custody on board the ship, aircraft or train¹⁵. In addition, the captain of the ship or aircraft or the train manager, if so required by an immigration officer, must prevent from disembarking or leaving the train in the United Kingdom or before the directions for his removal have been fulfilled any person placed on board the ship, aircraft through train or shuttle train¹⁶, and the captain or train manager may for that purpose detain the person in custody on board the ship, aircraft or train¹⁷.

A person liable to be detained under these provisions may be arrested without warrant by a constable or by an immigration officer¹⁸. If a justice of the peace is by written information on oath satisfied that there is reasonable ground for suspecting that a person liable to be arrested is to be found on any premises, he may grant a warrant authorising any immigration officer or constable to enter, if need be by force, the premises named in the warrant for the purpose of searching for and arresting that person¹⁹. Immigration officers and constables have powers to search persons arrested under these provisions and the premises on which such persons are found, and to seize documents²⁰.

Persons may be detained²¹ in such places as the Secretary of State²² may direct (when not detained on a ship, aircraft or train)²³. Where a person is detained, any immigration officer, constable or prison officer, or any other person authorised by the Secretary of State, may take all such steps as may be reasonably necessary for photographing, measuring, fingerprinting or otherwise identifying him²⁴. A person detained may be taken, in the custody of a constable or of any person acting under the authority of an immigration officer, to and from any place where he is required to be for the purpose of ascertaining his citizenship or nationality or of arranging admission to another country or territory or for any purpose connected with the operation of the Immigration Act 1971²⁵.

Detention must be compatible with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)²⁶.

1 le under the Immigration Act 1971 s 4(2), Sch 2 para 2: see para 143 ante.

2 Ibid Sch 2 para 16(1). As to the meaning of 'United Kingdom' see para 5 note 1 ante. As to the giving of directions and removal of persons refused leave to enter see para 152 ante. Detention may continue while another application is considered: *R v Secretary of State for the Home Department, ex p Kuldip Singh Mahal* [1986] Imm AR 369. As to alternative bases of detention see also *R v Immigration Appeal Tribunal, ex p Secretary of State for the Home Department* [1990] 3 All ER 652, [1990] 1 WLR 1126, CA. The power to detain is impliedly limited to such period of time as is reasonably necessary to enable the machinery of deportation or

removal to be carried out: see *R v Governor of Durham Prison, ex p Hardial Singh* [1984] 1 All ER 983, [1984] 1 WLR 704, sub nom *Re Hardial Singh* [1983] Imm AR 198; *Re Wasfi Mahmood* [1995] Imm AR 311; *Tan Te Lam v Superintendent of Tai A Chau Detention Centre* [1997] AC 97, [1996] 4 All ER 256, PC. The short-term detention of asylum-seekers to determine the basis of their claim is lawful under the Immigration Act 1971 and the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5: see *R (on the application of Saadi) v Secretary of State for the Home Department* [2001] EWCA Civ 1512, [2001] 4 All ER 961, [2002] 1 WLR 356. As to detention for an ulterior purpose see *R v Governor of Richmond Remand Centre, ex p Asghar* [1971] 1 WLR 129, DC. Where the issue is under which power a person is detained but it is accepted that there is a power, habeas corpus is not appropriate: *Re Maybasan* [1991] Imm AR 89. As to art 5 of the Convention see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 122 et seq.

3 Ie under the Immigration Act 1971 Sch 2 para 2A (as added): see para 143 ante.

4 Ibid Sch 2 para 16(1A) (added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 60).

5 Ie under the Immigration Act 1971 Sch 2 paras 8-10 (as amended) (removal of persons refused leave to enter and illegal entrants: see para 152 ante) and Sch 2 paras 12-14 (as amended) (seamen and aircrews: see para 143 ante) and, by the operation of the Immigration and Asylum Act 1999 s 10(7) (see para 152 ante), those liable to removal under s 10(1) (removal of certain persons unlawfully in the United Kingdom: see para 152 ante).

6 Immigration Act 1971 Sch 2 para 16(2) (substituted by the Immigration and Asylum Act 1999 s 140(1); modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(11)(p)(i); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7)).

7 As to the meaning of 'ship' see para 87 note 2 ante.

8 As to the meaning of 'aircraft' see para 87 note 3 ante.

9 For the meaning of 'control zone' see para 93 note 5 ante.

10 For the meaning of 'tunnel system' see para 196 note 3 post.

11 Immigration Act 1971 Sch 2 para 16(3) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(11)(p)(ii); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7).

12 For the meaning of 'captain' see para 87 note 1 ante.

13 For the meaning of 'train manager' see para 87 note 1 ante.

14 For the meaning of 'disembark' see para 93 note 1 ante.

15 Immigration Act 1971 Sch 2 para 16(3) (as modified: see note 11 supra).

16 Ie under ibid Sch 2 paras 11-15 (as amended): see paras 143, 152 ante.

17 Ibid Sch 2 para 16(4) (as modified: see note 11 supra), Sch 2 para 16(5) (added for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(11)(p)(iii); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7).

18 Immigration Act 1971 Sch 2 para 17(1). The power of arrest without warrant was specifically preserved by the Police and Criminal Evidence Act 1984 s 26(2), Sch 2: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 927. A police constable making an arrest or taking a person into custody after an arrest by another person in circumstances arising from the Immigration Act 1971 Sch 2 para 16(3) is not obliged to take that person to a police station as soon as practicable: see the Police and Criminal Evidence Act 1984 s 30(12) (a).

19 Immigration Act 1971 Sch 2 para 17(2) (amended by the Immigration and Asylum Act 1999 s 140(2)).

20 See the Immigration Act 1971 Sch 2 paras 25A, 25B (both as added); and paras 207, 208 post. Provision is also made for searches in police custody (see Sch 2 para 25C (as added); and para 208 post) and for access to seized material (see Sch 2 para 25D (as added); and para 209 post).

21 Ie under ibid Sch 2 para 16 (as amended): see the text and notes 1-17 supra.

22 As to the Secretary of State see para 2 ante.

23 Immigration Act 1971 Sch 2 para 18(1).

24 Ibid Sch 2 para 18(2), 2A (Sch 2 para 2A added by the Immigration and Asylum Act 1999 Sch 14 para 61). See also *Irawo-Osan v Secretary of State for the Home Department* [1992] Imm AR 337, CA. This power is additional to the powers of fingerprinting contained in the Immigration and Asylum Act 1999 s 141: see para 150 ante.

25 Immigration Act 1971 Sch 2 para 18(3). A person is deemed to be in legal custody at any time when he is detained under Sch 2 para 16 (as amended) (see the text and notes 1-17 supra) or is being removed in pursuance of Sch 2 para 18(3): Sch 2 para 18(4).

26 Ie the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 122 et seq. Deprivation of liberty must be for the prevention of unlawful entry or for removal, must be proportionate and provide appropriate safeguards, and must not be arbitrary: see art 5(1)(f); *Amuur v France* (1996) 22 EHRR 533. There must be prompt access to a court to determine the legality of detention: Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 5(4); *Chahal v United Kingdom* (1996) 23 EHRR 413. The detention of asylum-seekers for a short period to assess their claims has been held to comply with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5: see *R (on the application of Saadi) v Secretary of State for the Home Department* [2001] EWCA Civ 1512, [2001] 4 All ER 961, [2002] 1 WLR 356. As to the derogation of the United Kingdom government from art 5(1) of the Convention in relation to suspected international terrorists see para 167 post.

UPDATE

156-159 Detention

For provision relating to detention at ports see PARA 159A.

156 Detention of persons liable to examination and removal

TEXT AND NOTES--The Secretary of State now has the same power to detain as immigration officers, in the following circumstances: (1) pending a decision by him whether to give directions in respect of the person under the Immigration Act 1971 Sch 2 paras 10, 10A, or 14 (see PARAS 152, 153); and (2) where the Secretary of State has power to examine a person or grant or refuse them leave to enter under the 1971 Act s 3A (see PARA 86), pending the examination, his decision to give or refuse leave to enter, his decision to set removal directions or removal of such a person: see Nationality, Immigration and Asylum Act 2002 s 62.

NOTES--A provision which does not confer power to detain a person, but refers, in any terms, to a person who is liable to detention under a provision of the Immigration Acts, is to be taken to include a person if the only reason why he cannot be detained under the provision is that (1) he cannot presently be removed from the United Kingdom, because of a legal impediment connected with the United Kingdom's obligations under an international agreement; (2) practical difficulties are impeding or delaying the making of arrangements for his removal from the United Kingdom; or (3) practical difficulties, or demands on administrative resources, are impeding or delaying the taking of a decision in respect of him: 2002 Act s 67(1), (2). This provision is to be treated as always having had effect: s 67(3). For the meaning of 'Immigration Acts' see PARA 83.

TEXT AND NOTE 4--A person who has been required to submit to further examination under the Immigration Act 1971 Sch 2 para 3(1A) (see PARA 143) may be detained under the authority of an immigration officer, for a period not exceeding 12 hours,

pending the completion of the examination: Sch 2 para 16(1B) (added by Immigration, Asylum and Nationality Act 2006 s 42(3)).

NOTE 5--Directions for removal may now also be given under the Immigration Act 1971 Sch 2 para 10A (see PARA 152): Sch 2 para 16(2) (amended by 2002 Act s 73(5)). See also Case C-357/09 *Civil proceedings concerning Kadzoev (Huchbarov)* [2010] All ER (D) 01 (Mar), ECJ.

NOTES 6, 11, 17--SI 2004/1405 art 7 amended: SI 2007/3579.

NOTE 6--For guidance on the detention of asylum seekers challenging the decision to remove see *R (on the application of Nadarajah) v Secretary of State for the Home Department*; *R (on the application of Amirthanathan) v Secretary of State for the Home Department* [2003] EWCA Civ 1768, (2003) Independent, 19 December.

TEXT AND NOTE 19--For the words 'if need be by force' read 'if need be by reasonable force': Immigration Act 1971 Sch 2 para 17(2) (amended by 2002 Act s 63).

Where an immigration officer or constable enters premises in reliance on a warrant under the 1971 Act Sch 2 para 17(2), and detains a person on the premises, a detainee custody officer may enter the premises, if need be by reasonable force, for the purpose of carrying out a search: Sch 2 para 17(3), (4) (Sch 2 para 17(3)-(5) added by 2002 Act s 64). For these purposes, 'detainee custody officer' means a person in respect of whom a certificate of authorisation is in force under the Immigration and Asylum Act 1999 s 154 (see PARA 158); and 'search' means a search under Sch 13 para 2(1)(a) (see PARA 158): 1971 Act Sch 2 para 17(5).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(iv) Detention/157. Detention centres.

157. Detention centres.

A manager must be appointed for every detention centre¹. In the case of a contracted out detention centre², the person appointed as manager must be a detainee custody officer³ whose appointment is approved by the Secretary of State⁴. The manager of a detention centre has such functions as are conferred on him by detention centre rules⁵.

The manager of a contracted out detention centre may not: (1) inquire into a disciplinary charge laid against a detained person; (2) conduct the hearing of such a charge; or (3) make, remit or mitigate an award in respect of such a charge⁶. The manager may not, except in cases of urgency, order the removal of a detained person from association with other detained persons, order the temporary confinement of a detained person in special accommodation, or order the application to a detained person of any other special control or restraint (other than handcuffs)⁷.

The Secretary of State may enter into a contract with another person for the provision or running, or the provision and running, by him, or, if the contract so provides, for the running by his sub-contractors, of any detention centre or part of a detention centre⁸. While a detention centre contract for the running of a detention centre or part of a detention centre is in force, the detention centre or part is run subject to and in accordance with the provisions of, or made under, the Immigration and Asylum Act 1999⁹; and, in the case of a part, that part and the remaining part are treated for the purposes of those provisions as if they were separate detention centres¹⁰. Certain enactments¹¹ are disapplied when the Secretary of State grants a lease or tenancy¹² of land for the purposes of a detention centre contract¹³.

The Secretary of State must appoint a contract monitor¹⁴ for every contracted out detention centre¹⁵. The contract monitor must keep under review, and report to the Secretary of State on, the running of a detention centre for which he is appointed; and he must investigate, and report to the Secretary of State on, any allegations made against any person performing custodial functions¹⁶ at that centre¹⁷. The contractor¹⁸, and any sub-contractor of his, must do all that he reasonably can, whether by giving directions to the officers of the detention centre or otherwise, to facilitate the exercise by the contract monitor of his functions¹⁹.

The Secretary of State may enter into a contract with another person for functions at, or connected with, a directly managed detention centre²⁰ to be performed by detainee custody officers provided by that person, or for such functions to be performed by certified prisoner custody officers²¹ provided by that person²².

If it appears to the Secretary of State that the manager of a contracted out detention centre has lost, or is likely to lose, effective control of the centre or of any part of it, or it is necessary to do so in the interests of preserving the safety of any person or of preventing serious damage to any property²³, he may appoint a person (to be known as the controller) to act as manager of the detention centre for the period beginning with the time specified in the appointment, and ending with the time specified in the notice of termination²⁴. During that period all the functions which would otherwise be exercisable by the manager or the contract monitor are to be exercisable by the controller; the contractor and any sub-contractor of his must do all that he reasonably can to facilitate the exercise by the controller of his functions, and the staff of the detention centre must comply with any directions given by the controller in the exercise of his functions²⁵. As soon as practicable after appointing or terminating the appointment of a controller, the Secretary of State must give notice of the appointment to those entitled to notice²⁶.

The Secretary of State must appoint a committee (to be known as the visiting committee) for each detention centre²⁷. The functions of the visiting committee for a detention centre are to be such as may be prescribed by the detention centre rules²⁸ but the rules must include provision as to the making of visits to the centre by members of the visiting committee²⁹, for the hearing of complaints made by persons detained in the centre³⁰, and requiring the making of reports by the visiting committee to the Secretary of State³¹. Every member of the visiting committee for a detention centre may at any time enter the centre and have free access to every part of it and to every person detained there³².

1 Immigration and Asylum Act 1999 s 148(1). 'Detention centre' means a place which is used solely for the detention of detained persons but which is not a short-term holding facility, a prison or part of a prison: s 147. 'Detained persons' means persons detained or required to be detained under the Immigration Act 1971: Immigration and Asylum Act 1999 s 147. 'Short-term holding facility' means a place used solely for the detention of detained persons for a period of not more than seven days or for such other period as may be prescribed by regulations: s 147. At the date at which this volume states the law no such regulations had been made. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

2 'Contracted out detention centre' means a detention centre in relation to which a detention centre contract is in force: *ibid* s 147. For the meaning of 'detention centre contract' see para 150 note 1 ante. In relation to a detention centre contract entered into by the Secretary of State before the commencement of s 149, the provisions of s 149 are to be treated as having been in force at the time: s 149(10).

3 'Detainee custody officer' means a person in respect of whom a certificate of authorisation (ie a certificate issued under *ibid* s 154: see para 158 post) is in force: s 147.

4 *Ibid* s 148(2). As to the Secretary of State see para 2 ante.

5 *Ibid* s 148(3). The Secretary of State must make rules for the regulation and management of detention centres: s 153(1). Detention centre rules may, among other things, make provision with respect to the safety, care, activities, discipline and control of detained persons: s 153(2). The rules may provide for detained persons to be measured and photographed, tested for drugs or alcohol, and medically examined: Sch 12 paras 1-3. As to the rules that have been made see the Detention Centre Rules 2001, SI 2001/238. Part II (rr 3-38) sets out the purpose of detention centres and makes provision for the admission and discharge, welfare and privileges,

religion, communications, health care, requests and complaints of detained persons; Pt III (rr 39-44) provides for the maintenance of security and safety at a detention centre; Pt IV (rr 45-52) makes provision for officers at detention centres; Pt V (rr 53-57) provides for persons having access to detention centres; and Pt VI (rr 58-64) makes provision for visiting committees (as to which see the text and notes 27-32 *infra*). As to the making of rules under the Immigration and Asylum Act 1999 see para 219 note 11 *post*.

A detained person in respect of whom there are reasonable grounds for believing him to be suffering from a specified disease, who fails without reasonable excuse to submit to a medical examination, is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level five on the standard scale: see the Immigration and Asylum Act 1999 Sch 12 para 3(4), (5). As to the standard scale see para 81 note 2 *ante*. The diseases specified for these purposes are: acute encephalitis; acute poliomyelitis; amoebic dysentery; anthrax; bacillary dysentery; cholera; diphtheria; food poisoning; leprosy; leptospirosis; malaria; measles; meningitis; meningococcal septicaemia (without meningitis); mumps; ophthalmia neonatorum; paratyphoid fever; plague; rabies; relapsing fever; rubella; salmonella infections; scarlet fever; smallpox; staphylococcal infections likely to cause food poisoning; tetanus; tuberculosis; typhoid fever; typhus; viral haemorrhagic fever; viral hepatitis; whooping cough; and yellow fever: see the Detention Centre (Specified Diseases) Order 2001, SI 2001/240, art 2, Schedule. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 *ante*.

A person who aids a detainee in escaping is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding two years or to a fine or both: see Sch 12 para 4. A person who brings or enables alcohol to be brought into the centre is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 3 on the standard scale or both: see Sch 12 para 5. A person who brings any unauthorised item in or out of the centre is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see Sch 12 para 6. Notice of these offences and their penalties must be displayed publicly in the detention centre: Sch 12 paras 7, 8.

6 Ibid s 148(4).

7 Ibid s 148(5).

8 Ibid s 149(1).

9 *Ie* *ibid* Pt VIII (ss 147-159).

10 Ibid s 149(2).

11 *Ie* the Landlord and Tenant Act 1954 Pt II (ss 23-46) (as amended) (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) para 706 *et seq*); the Law of Property Act 1925 s 146 (as amended) (see LANDLORD AND TENANT vol 27(1) (2006 Reissue) para 619 *et seq*); the Landlord and Tenant Act 1927 s 19(1), (2), (3) (see LANDLORD AND TENANT vol 27(1) (2006 Reissue) paras 470, 486, 498); the Landlord and Tenant Act 1988 (see LANDLORD AND TENANT vol 27(1) (2006 Reissue) paras 490-491); the Agricultural Holdings Act 1986 (see AGRICULTURAL LAND vol 1 (2008) para 321 *et seq*); the Conveyancing Act 1881 s 14 (repealed); and the Conveyancing and Law of Property Act 1892 (repealed).

12 'Lease or tenancy' includes an underlease, sublease or sub-tenancy: Immigration and Asylum Act 1999 s 149(9).

13 Ibid s 149(3).

14 'Contract monitor' means a person appointed by the Secretary of State under *ibid* s 149(4): s 147.

15 Ibid s 149(4). A person may be appointed as the contract monitor for more than one detention centre: s 149(5). The contract monitor is to have such functions as may be conferred on him by detention centre rules (see note 5 *supra*), and has the status of a Crown servant: s 149(6).

16 'Custodial functions' means custodial functions at a detention centre: *ibid* s 147.

17 Ibid s 149(7).

18 For the meaning of 'contractor' see para 150 note 1 *ante*.

19 Immigration and Asylum Act 1999 s 149(8).

20 'Directly managed detention centre' means a detention centre which is not a contracted out detention centre: *ibid* s 147.

21 'Certified prisoner custody officer' means a prisoner custody officer certified under the Criminal Justice Act 1991 s 89 (as amended) (see PRISONS vol 36(2) (Reissue) paras 524, 528) or the Criminal Justice and Public

Order Act 1994 s 114 (as amended) (see PRISONS vol 36(2) (Reissue) paras 524) to perform custodial duties: Immigration and Asylum Act 1999 s 147. 'Prisoner custody officer' has the same meaning as in the Criminal Justice Act 1991 (see PRISONS vol 36(2) (Reissue) paras 524): Immigration and Asylum Act 1999 s 147.

22 Ibid s 150(1). For the purposes of s 150(1), 'detention centre' includes a short-term holding facility: s 150(2).

23 Ibid s 151(1).

24 Ibid s 151(2). A notice of termination is issued when the Secretary of State is satisfied that a controller is no longer needed for a particular detention centre: s 151(5).

25 Ibid s 151(3). The controller has the status of a Crown servant: 151(4).

26 Ibid s 151(6), (7). Those entitled to notice are the contractor, the manager, the contract monitor and the controller: s 151(8).

27 Ibid s 152(1).

28 Ibid s 152(2). As to the detention centre rules relating to visiting committees see the Detention Centre Rules 2001, SI 2001/238, Pt VI; and note 5 supra.

29 See *ibid* rr 60-63.

30 See *ibid* r 62.

31 Immigration and Asylum Act 1999 s 152(3). As to the making of reports by visiting committees see the Detention Centre Rules 2001, SI 2001/238, r 64.

32 Immigration and Asylum Act 1999 s 152(4). See PRISONS vol 36(2) (Reissue) para 508.

UPDATE

156-159 Detention

For provision relating to detention at ports see PARA 159A.

157 [Removal] centres

TEXT AND NOTES--Detention centres are now known as removal centres: see the Nationality, Immigration and Asylum Act 2002 s 66.

A detained person does not qualify for the national minimum wage in respect of work which he does in pursuance of removal centre rules: Immigration and Asylum Act 1999 s 153A (added by Immigration, Asylum and Nationality Act 2006 s 59(1)).

NOTE 1--Definition of 'detained persons' includes persons detained or required to be detained under the 2002 Act s 62 (see PARA 156): 1999 Act s 147 (amended by the 2002 Act s 62(14)). Definition of 'short-term holding facility' includes a place used for the detention of detained persons for a period of not more than seven days or for such other period as may be prescribed, and persons other than detained persons for any period: 1999 Act s 147 (amended by Borders, Citizenship and Immigration Act 2009 s 25).

NOTE 3--A reference in the 1999 Act Sch 12 to a detainee custody officer includes a reference to a prison officer or prisoner custody officer exercising custodial functions: Sch 12 para 9 (added by the 2002 Act s 65(3)).

NOTE 5--SI 2001/238 r 27(6) amended: SI 2005/673. See *R (on the application of SK) v Secretary of State for the Home Department* [2008] EWHC 98 (Admin), [2009] 2 All ER 365 (human rights compatibility of reviews of detention).

NOTES 8-19--1999 Act s 149 extended to short-term holding facilities: Immigration (Short-term Holding Facilities) Regulations 2002, SI 2002/2538.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(iv) Detention/158. Custody and movement of detained persons.

158. Custody and movement of detained persons.

On an application made to him, the Secretary of State¹ may certify that an applicant is authorised to perform escort functions², or is authorised to perform both escort functions and custodial functions³. The Secretary of State may not issue a certificate of authorisation unless he is satisfied that the applicant is a fit and proper person to perform the functions to be authorised, and has received training to such standard as the Secretary of State considers appropriate for the performance of those functions⁴. A certificate of authorisation continues in force until such date, or the occurrence of such event, as may be specified in the certificate⁵. A certificate which authorises the performance of both escort functions and custodial functions may specify one date or event for one of those functions and a different date or event for the other⁶.

If the Secretary of State considers that it is necessary for the functions of detainee custody officers to be conferred on prison officers or prisoner custody officers⁷, he may make arrangements for that purpose⁸.

The Secretary of State may make arrangements for: (1) the delivery of detained persons⁹ to premises in which they may lawfully be detained; (2) the delivery of persons from any such premises for the purposes of their removal from the United Kingdom in accordance with directions given under the Immigration Act 1971 or the Immigration and Asylum Act 1999; (3) the custody of detained persons who are temporarily outside such premises; (4) the custody of detained persons held on the premises of any court¹⁰. Escort arrangements may provide for functions ('escort functions') under the arrangements to be performed, in such cases as may be determined by or under the arrangements, by detainee custody officers¹¹. Escort arrangements may include entering into contracts with other persons for the provision by them of detainee custody officers, or certified¹² prisoner custody officers¹³. A person responsible for performing a function under heads (1) to (4) above, in accordance with a transfer direction¹⁴, complies with the direction if he does all that he reasonably can to secure that the function is performed by a person acting in accordance with escort arrangements¹⁵. The Secretary of State may make rules for the regulation and management of short-term holding facilities¹⁶.

A person who is or has been employed (whether as a detainee custody officer, prisoner custody officer or otherwise): (a) in accordance with escort arrangements; (b) at a contracted out detention centre¹⁷; or (c) to perform contracted out functions¹⁸ at a directly managed detention centre¹⁹, is guilty of an offence if he discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information which he acquired in the course of his employment and which relates to a particular detained person²⁰.

For the purpose of taking a person to or from a detention centre under the order of any authority competent to give the order, a constable may act outside the area of his jurisdiction²¹.

1 As to the Secretary of State see para 2 ante.

2 'Escort functions' means functions under escort arrangements made by the Secretary of State under the Immigration and Asylum Act 1999 s 156 (see the text and notes 10-15 infra): s 147.

3 Ibid s 154(1). 'Custodial functions' means custodial functions at a detention centre (see para 157 ante): s 147. Custodial functions may be discharged at a detention centre only by a detainee custody officer authorised to perform such functions, or a prison officer, or a certified prisoner custody officer, exercising functions in relation to the detention centre in accordance with arrangements made under s 154(5) (see the text and note 8 infra), or as a result of a contract entered into under s 150(1) (see para 157 ante): s 155(1). For the meaning of 'detainee custody officer' see para 157 note 3 ante. For the meaning of 'certified prisoner custody officer' see para 157 note 21 ante. As to discipline and other matters at detention centres and short-term holding facilities see s 155(2), Sch 12; and para 157 ante.

It is an offence to assault a detainee custody officer performing escort or custodial functions, and a person is liable on summary conviction to six months' imprisonment or a fine not exceeding level 5 on the standard scale, or both: see Sch 11 para 4. It is also an offence to obstruct a detainee custody officer in performance of those functions, and a person is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see Sch 11 para 5. As to the standard scale see para 81 note 2 ante. Provision is also made in respect of the performance by detainee custody officers of functions of a custodial nature at short-term holding facilities (see Sch 11 para 3); and there is a requirement for a detainee custody officer acting in accordance with escort arrangements to be identifiable as such by means of a badge or uniform (see Sch 11 para 6).

4 Ibid s 154(2). A person who, for the purpose of obtaining a certificate of authorisation for himself or for any other person, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 154(7), Sch 11 para 1.

5 Ibid s 154(3). The certificate may be suspended or revoked at any time in prescribed circumstances under Sch 11 para 7: s 154(3). As to the prescribed circumstances in which the certificate may be suspended see Sch 11 para 7(2), (3); and the Immigration (Suspension of Detainee Custody Officer Certificate) Regulations 2001, SI 2001/241, reg 3. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

6 Ibid s 154(4).

7 For the meaning of 'prisoner custody officer' see para 157 note 21 ante.

8 Immigration and Asylum Act 1999 s 154(5). A prison officer acting under such arrangements has all the powers, authority, protection and privileges of a constable: s 154(6).

9 For the meaning of 'detained persons' see para 157 note 1 ante.

10 Immigration and Asylum Act 1999 s 156(1). 'Court' includes adjudicators, the Immigration Appeal Tribunal, and the Special Immigration Appeals Commission: s 156(3). As to the Immigration Appeal Tribunal see para 173 post; and as to the Special Immigration Appeals Commission see para 184 post.

11 Ibid s 156(2).

12 Ie certified under the Criminal Justice Act 1991 s 89 (as amended) (see PRISONS vol 36(2) (Reissue) paras 524, 528) or the Criminal Justice and Public Order Act 1994 s 114 (as amended) or s 122 (see PRISONS vol 36(2) (Reissue) paras 524, 532) to perform escort functions. See para 157 note 21 ante.

13 Immigration and Asylum Act 1999 s 156(4). As to escort arrangements see further s 156(5), Sch 13. For the duties of escort managers see Sch 13 para 1. Detainee custody officers exercising custodial or escort functions have powers of search of detained persons: see Sch 11 para 2, Sch 13 para 2. As to the persons responsible for the custody of detainees who have committed disciplinary offences see Sch 13 para 3.

14 'Transfer direction' means a transfer direction given under the Mental Health Act 1983 s 48 (as amended) (see MENTAL HEALTH vol 30(2) (Reissue) paras 536-537): Immigration and Asylum Act 1999 s 156(7).

15 Ibid s 156(6).

16 Ibid s 157(3). Any provision relating to detention centres (other than s 150 (see para 157 ante)) may by regulations be extended to apply to short-term holding facilities: s 157(1), (2). At the date at which this volume states the law no such regulations had been made. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante. For the meaning of 'short-term holding facility' see para 157 note 1 ante.

17 For the meaning of 'detention centre contract' see para 150 note 1 ante.

18 'Contracted out functions' means functions which, as the result of a contract entered into under the Immigration and Asylum Act 1999 s 150 (see para 157 ante), fall to be performed by detainee custody officers or certified prisoner custody officers: s 158(3).

19 For the meaning of 'directly managed detention centre' see para 157 note 20 ante.

20 Immigration and Asylum Act 1999 s 158(1). A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both, and on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both: s 158(2). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

21 Immigration and Asylum Act 1999 s 159(1). When so acting, the constable concerned retains all the powers, authority, protection and privileges of his office: s 159(2).

UPDATE

156-159 Detention

For provision relating to detention at ports see PARA 159A.

158 Custody and movement of detained persons

TEXT AND NOTES--Detention centres are now known as removal centres: see the Nationality, Immigration and Asylum Act 2002 s 66.

NOTE 3--A reference in the Immigration and Asylum Act 1999 Sch 11 to a detainee custody officer includes a reference to a prison officer or prisoner custody officer exercising custodial functions: Sch 11 para 8 (added by the 2002 Act s 65(2)).

TEXT AND NOTES 7, 8--The Secretary of State need no longer consider it necessary to make such arrangements: 1999 Act s 154(5) (substituted by the 2002 Act s 65(1)).

NOTE 10--Now 'court' includes the Asylum and Immigration Tribunal and the Special Immigration Appeals Commission: *ibid* s 156(3) (amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 26 Sch 2 para 15).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(iv) Detention/159. Expenses of custody, accommodation and maintenance of persons refused entry.

159. Expenses of custody, accommodation and maintenance of persons refused entry.

Where a person is refused leave to enter the United Kingdom¹ and removal directions are given², the owners or agents of the ship³ or aircraft⁴ in which he arrived, or the person operating the international service⁵ by which he arrived through the tunnel system⁶, are liable to pay on demand any expenses incurred by the Secretary of State⁷ in respect of the custody, accommodation or maintenance of that person for any period (not exceeding 14 days) after his arrival while he was detained or liable to be detained⁸. There is no liability to pay the expenses of a person who, when he arrived in the United Kingdom, held a document which was or purported to be (unless its falsity was reasonably apparent) a certificate of entitlement or current entry certificate or a current work permit with his name on it⁹.

If, before the directions for a person's removal have been carried out, he is given leave to enter the United Kingdom, or if he is afterwards given that leave in consequence of the determination in his favour of an appeal (being an appeal against a refusal of leave to enter by virtue of which the directions were given), or it is determined on an appeal that he does not require leave to enter (being an appeal occasioned by such a refusal), no sum may be demanded for expenses incurred and any sum already demanded is to be refunded¹⁰.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 le under the Immigration Act 1971 s 4(2), Sch 2 paras 8, 10 (both as amended): see para 152 ante.

3 As to the meaning of 'ship' see para 87 note 2 ante.

4 As to the meaning of 'aircraft' see para 87 note 3 ante.

5 For the meaning of 'international service' see para 87 note 1 ante.

6 For the meaning of 'tunnel system' see para 196 note 3 ante.

7 As to the Secretary of State see para 2 ante.

8 Immigration Act 1971 Sch 2 para 19(1) (amended by the Asylum and Immigration Act 1996 s 12(1), Sch 2 para 8; and the Channel Tunnel (International Arrangements) Order, SI 1993/1813, art 9, Sch 6 Pt I; and modified for the purposes of the security arrangements for the Channel Tunnel by art 7(1) Sch 4 para 1(11)(q); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). The expenses include expenses in conveying the person in question to and from the place where he is detained or accommodated unless the journey is made for the purpose of attending an appeal by him under the Immigration Act 1971: Sch 2 para 19(4). Schedule 2 para 19(1) (as amended and modified) does not have effect in relation to directions which, in consequence of an appeal under the Immigration Act 1971, have ceased to have effect or are for the time being of no effect: Sch 2 para 19(4). As to appeals see para 173 et seq post.

Unless directions are temporarily suspended because of a pending appeal, where: (1) directions are given in respect of an illegal entrant under Sch 2 para 9 or Sch 2 para 10 (both as amended) (see para 152 ante); or (2) a person has lawfully entered the country without leave (see paras 97-92 ante) but directions have been given in respect of him under Sch 2 para 13(2)(A) or Sch 2 para 14 (see para 152 ante), the owners or agents of the ship or aircraft in which he arrived in the United Kingdom or the person operating the international service by which he arrived are liable to pay on demand any expenses incurred by the Secretary of State in respect of the custody, accommodation or maintenance of that person for any period not exceeding 14 days after his arrival while he was detained or liable to be detained under Sch 2 para 16 (as amended) (see para 156 ante): Sch 2 para 20(1), (3) (Sch 2 para 20(1) amended by the Asylum and Immigration Act 1996 Sch 2 para 9(1); and the Channel Tunnel (International Arrangements) Order, SI 1993/1813, art 9, Sch 6 Pt I; and modified for the purposes of the security arrangements for the Channel Tunnel by Sch 4 para 1(11)(q); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7). No such liability is incurred if before the removal of such persons, they are given leave to remain: see the Immigration Act 1971 Sch 2 para 20(2). Schedule 2 para 20(1) does not apply to expenses in respect of an illegal entrant if he obtained leave to enter by deception and the leave has not been cancelled under Sch 2 para 6(2) (as amended) (see para 148 ante): Sch 2 para 20(1)(a), (1A) (Sch 2 para 20(1A) added by the Immigration and Asylum Act 1996 Sch 2 para 9). Expenses include travel expenses payable for conveying the person in question to and from the place where he is detained or accommodated, unless the journey is made for the purpose of attending an appeal by him under the Immigration Act 1971: Sch 2 para 20(3).

9 Ibid Sch 2 para 19(2) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 3(1)). As to certificates of entitlement see para 85 ante. As to the liability of carriers for passengers without proper documents see para 203 post.

10 Immigration Act 1971 Sch 2 para 19(3). As to appeals see para 173 et seq post. The expenses of the Secretary of State incurred in connection with the removal (including the expenses of maintenance pending removal) of any person from the country, or the departure with him of any dependants, are to be defrayed out of money provided by Parliament: s 31(b).

UPDATE

156-159 Detention

For provision relating to detention at ports see PARA 159A.

159 Expenses of custody, accommodation and maintenance of persons refused entry

NOTE 8--SI 2004/1405 art 7 amended: SI 2007/3579.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(iv) Detention/159A. Detention at ports.

159A. Detention at ports.

1. Designated immigration officers

The Secretary of State may designate immigration officers¹. The Secretary of State may designate only officers who the Secretary of State thinks are (1) fit and proper for the purpose, and (2) suitably trained². A designation (a) may be permanent or for a specified period, and (b) may (in either case) be revoked³.

1 le for the purposes of the UK Borders Act 2007 s 2 (detention) (see PARA 159A.2): s 1(1).

2 Ibid s 1(2).

3 Ibid s 1(3).

2. Detention

A designated immigration officer¹ at a port² in England, Wales or Northern Ireland may detain an individual if the immigration officer thinks that the individual (1) may be liable to arrest by a constable³, or (2) is subject to a warrant for arrest⁴. A designated immigration officer who detains an individual (a) must arrange for a constable to attend as soon as is reasonably practicable, (b) may search the individual for, and retain, anything that might be used to assist escape or to cause physical injury to the individual or another person, (c) must retain anything found on a search which the immigration officer thinks may be evidence of the commission of an offence, and (d) must, when the constable arrives, deliver to the constable the individual and anything retained on a search⁵. An individual may not be detained under these provisions for longer than three hours⁶. A designated immigration officer may use reasonable force for the purpose of exercising a power under these provisions⁷. Where an individual whom a designated immigration officer has detained or attempted to detain under these provisions leaves the port, a designated immigration officer may (i) pursue the individual, and (ii) return the individual to the port⁸.

Detention under the above provisions is treated as detention under the Immigration Act 1971 for the purposes of Part 8 of the Immigration and Asylum Act 1999⁹ (detained persons)¹⁰.

1 As to designated immigration officers see PARA 159A.1.

2 In the UK Borders Act 2007 s 2 'port' includes an airport and a hoverport: s 4(1). A place is treated for the purposes of s 2 as a port in relation to an individual if a designated immigration officer believes that the individual (1) has gone there for the purpose of embarking on a ship or aircraft, or (2) has arrived there on disembarking from a ship or aircraft: s 4(2).

3 Ie under the Police and Criminal Evidence Act 1984 s 24(1), (2) or (3): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 924.

4 2007 Act s 2(1).

5 Ibid s 2(2).

6 Ibid s 2(3).

7 Ibid s 2(4).

8 Ibid s 2(5).

9 Ie the Immigration and Asylum Act 1999 ss 147-159: see PARA 150 et seq.

10 2007 Act s 2(6).

3. Enforcement

An offence is committed by a person who (1) absconds from detention¹, (2) assaults an immigration officer exercising a power², or (3) obstructs an immigration officer in the exercise of a power³. A person guilty of an offence under head (1) or (2) above is liable on summary conviction to (a) imprisonment for a term not exceeding 51 weeks, (b) a fine not exceeding level 5 on the standard scale⁴, or (c) both⁵. A person guilty of an offence under head (3) above is liable on summary conviction to (i) imprisonment for a term not exceeding 51 weeks, (ii) a fine not exceeding level 3 on the standard scale, or (iii) both⁶.

1 Ie under the UK Borders Act 2007 s 2: see PARA 159A.2.

2 Ie under ibid s 2.

3 Ibid s 3(1), referring to a power under s 2.

4 As to the standard scale see PARA 81.

5 2007 Act s 3(2). See further NOTE 6.

6 Ibid s 3(3).

In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1121) (a) the reference to 51 weeks in head (a) in the TEXT is treated as a reference to six months, and (b) the reference to 51 weeks in head (i) in the TEXT is treated as a reference to one month: 2007 Act s 3(5).

UPDATE

156-159 Detention

For provision relating to detention at ports see PARA 159A.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(v) Deportation/160. Liability for deportation.

(v) Deportation

160. Liability for deportation.

A person who is not a British citizen¹ is liable for deportation² from the United Kingdom³ if the Secretary of State⁴ deems his deportation to be conducive to the public good⁵ or where he is the spouse or child under 18 of a person ordered to be deported⁶.

A person who, prior to 2 October 2000, was liable to deportation, having failed to observe a condition attached to limited leave⁷ or having remained beyond the time limited by that leave⁸, remains liable to deportation where a decision to make a deportation order⁹ against him was taken before 2 October 2000 or where the person has made a valid application for regularisation¹⁰.

In addition, a person who is not a British citizen is liable to deportation from the United Kingdom if, after he has attained the age of 17, he is convicted of an offence which is punishable with imprisonment and on his conviction is recommended for deportation by the court¹¹. Any court having power to sentence a convicted person for the offence in question may recommend him for deportation unless it commits him to be sentenced or further dealt with for that offence by another court¹². A court must not recommend a person for deportation unless he has been given not less than seven days' notice in writing: (1) stating that a person is not liable to deportation if he is a British citizen; (2) describing the persons who are British citizens; (3) stating the burden of proof as to British citizenship; and (4) stating the categories of non-British citizens who are exempt from deportation¹³.

The validity of a recommendation or purported recommendation for deportation cannot be called into question except on an appeal against the recommendation or against the conviction on which it is made¹⁴. However, the recommendation is to be treated as a sentence for the purpose of any enactment providing an appeal against sentence¹⁵. A deportation order must not be made on the recommendation of a court so long as an appeal or further appeal is pending against the recommendation or against the conviction on which it was based (or the time limit for appealing has not yet expired)¹⁶.

In considering whether deportation is the right course of action on the merits, the public interest is balanced against any compassionate circumstances of the case. While each case is considered in the light of the particular circumstances, the aim is to exercise the power of deportation consistently and fairly as between one person and another, although one case will rarely be identical to another in all material respects¹⁷. In cases to which the transitional provisions apply¹⁸, deportation is normally the proper course for a person who has failed to comply with, or has contravened, a condition, or who has remained without authority¹⁹.

Before a decision to deport is reached, the Secretary of State must take into account every relevant factor known to him, including: (1) age; (2) length of residence in the United Kingdom; (3) strength of connections with the United Kingdom; (4) personal history, including character, conduct and employment record; (5) domestic circumstances; (6) previous criminal record and the nature of any offence of which the person was convicted; (7) compassionate circumstances; and (8) representations received on the person's behalf²⁰.

Where a person liable to a deportation order²¹ voluntarily leaves the United Kingdom to live permanently abroad, without a deportation order being made, the Secretary of State may make such payments as he may determine to meet that person's leaving expenses, including the travelling expenses for members of his family or household²².

There is a right of appeal against a decision to deport made otherwise than on a recommendation²³.

Where a person is liable for deportation²⁴, the Secretary of State may make a deportation order against him, that is, an order requiring him to leave and prohibiting him from entering the United Kingdom²⁵. A deportation order invalidates any leave to enter or remain in the United Kingdom given before the order is made or while it is in force²⁶. A deportation order against a person may at any time be revoked by a further order of the Secretary of State²⁷ and ceases to

have effect if that person becomes a British citizen²⁸. There is a right of appeal against refusal to revoke a deportation order²⁹. Revocation of a deportation order does not entitle the person concerned to re-enter the United Kingdom but it does render him eligible to apply for admission³⁰. Application for revocation may be made either to the entry clearance officer or direct to the Home Office³¹. Applications for revocation are considered in the light of all the circumstances, including: (a) the grounds on which the order was made; (b) any representations made in support of revocation; (c) the interests of the community (including the maintenance of an effective immigration control); and (d) the interests of the applicant (including any compassionate circumstances)³². In the case of an applicant with a serious criminal record, continued exclusion, for a long term of years, is normally the proper course³³. In other cases, revocation is not normally authorised unless the situation has been materially altered, either by a change of circumstances since the order was made or by fresh information coming to light which was not before the court which made the recommendation, or the appellate authorities or the Secretary of State³⁴. The passage of time since the person was deported may also in itself amount to such a change of circumstances as to warrant revocation of the order³⁵. However, save in the most exceptional compassionate circumstances, the Secretary of State will not revoke the order unless the person has been absent from the United Kingdom for a period of at least three years since it was made³⁶.

Where a person is compulsorily detained and is receiving treatment for mental illness as an in-patient in a hospital³⁷ the Secretary of State may use his powers of deportation or removal as an alternative to removal under the Mental Health Act 1983³⁸.

A deportation order will not be made against any person if his removal in pursuance of the order would be contrary to the United Kingdom's obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)³⁹ or the Refugee Convention⁴⁰. An asylum-seeker may not be deported, although a deportation order may be made against him before determination of his claim⁴¹.

Enforcement action may be taken in respect of a suspected international terrorist despite the fact that (whether temporarily or indefinitely) the action cannot result in his removal from the United Kingdom because of a point of law which wholly or partly relates to an international agreement, or a practical consideration⁴². Enforcement action⁴³ which has effect in respect of a suspected international terrorist at the time of his certification⁴⁴ is treated as taken again⁴⁵ immediately after certification⁴⁶.

1 The provisions in this paragraph apply only to non-British citizens: see the Immigration Act 1971 ss 3, 5, 6 (all as amended); and the text and notes 2-28 *infra*. As to British citizens see paras 8, 23-43 *ante*. As to persons exempt from deportation see para 162 *post*.

2 I.e. a requirement to leave the United Kingdom and a prohibition on entry: *ibid* s 5(1). Under s 3(5) (as substituted) (see the text and notes 5-6 *infra*), those who overstay their leave are not subject to deportation proceedings but are subject to administrative removal under the Immigration and Asylum Act 1999 s 10: see para 152 *ante*. See also Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') paras 395A-395F (as added); and paras 152 *ante*, 169 *post*. Deportation remains a two-stage process, there being a distinction between: (1) a decision to deport or a recommendation for deportation; and (2) the actual making of a deportation order.

3 As to the meaning of 'United Kingdom' see para 5 note 1 *ante*.

4 As to the Secretary of State see para 2 *ante*.

5 Immigration Act 1971 s 3(5)(a) (s 3(5) substituted by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 44(2)); Immigration Rules para 363(i) (para 363 substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 53). The words 'conducive to the public good' are not defined and it is impossible to lay down general rules about the circumstances in which deportation may be justified on this basis. See *R v Secretary of State for the Home Department, ex p Hosenball* [1977] 3 All ER 452, [1977] 1 WLR 766, CA; *R v Immigration Appeal Tribunal, ex p Patel* [1988] AC 910, [1988] 2 All ER 378, [1988] Imm AR 434, HL (deception at time of entry a ground for deportation). A decision to deport under the Immigration Act 1971 s 3(5)(a) (as substituted) may be based solely upon a criminal conviction: *Said v Immigration Appeal Tribunal*

[1989] Imm AR 372, CA; *Goremsandu v Home Secretary* [1996] Imm AR 250, CA (it is open to the Home Secretary to decide that some offences are so serious, in the sense that they are sufficiently repugnant to the generally accepted standards of morality, that the continued presence of the offender in the community is unacceptable, irrespective of whether he is likely to re-offend). Thus, recidivism and propensity to commit further offences are not essential preconditions of the power to deport, but there must be some public interest at stake in favour of removal: *R v Immigration Appeal Tribunal, ex p Florent* [1985] Imm AR 141, CA. Only in exceptional cases where the personal conduct of the proposed deportee causes deep public revulsion does public policy require deportation: *R v Immigration Appeal Tribunal, ex p Florent* supra; *R v Secretary of State for the Home Department, ex p Marchon* [1992] CMLR 132, [1993] Imm AR 384, CA; *R (on the application of Samaroo) v Secretary of State for the Home Department* [2001] EWCA Civ 1139. Deportation has been held to be conducive to the public good where a person has been actively involved in directing and organising terrorist activities abroad whilst living in the United Kingdom: *R v Secretary of State for the Home Department, ex p Singh* [1995] Imm AR 447; *Secretary of State for the Home Department v Rehman* [2000] 3 All ER 778, CA (affd [2001] UKHL 47, [2002] 1 All ER 122). If a person's conduct would adversely reflect on the security of the United Kingdom, the Secretary of State could regard that person's presence in the United Kingdom as not being conducive to the public good even though the target for the conduct was another country and the views of the Secretary of State as to what is conducive to the public good for reasons of national security ought to be given considerable weight: *Secretary of State for the Home Department v Rehman* supra. Deportation may be 'conducive to the public good' where the person has entered into a marriage of convenience (*R v Immigration Appeal Tribunal, ex p Cheema* [1982] Imm AR 124, CA); deception of the Secretary of State in relation to such a marriage may also justify deportation under the Immigration Act 1971 s 3(5)(a) (as substituted) (*Patel v Immigration Appeal Tribunal* [1989] Imm AR 246, IAT). As to deportation on grounds of 'public policy' in relation to European law see para 226 post.

A pending application for an extension of leave does not preclude deportation: *Ex p Manvinder Kaur* (9 May 1991, unreported), QBD.

As to the right of appeal against the decision to make a deportation order under the Immigration Act 1971 s 3(5)(a) (as substituted) see para 176 post. Judicial review may lie if the Secretary of State has made an error of principle: *Ayo v Immigration Appeal Tribunal* [1990] Imm AR 461, CA (it would be perverse not to reconsider, in the light of changed circumstances, an unimplemented decision to deport taken over four years earlier).

6 Immigration Act 1971 s 3(5)(b) (as substituted: see note 5 supra); Immigration Rules paras 363(ii), 365-368 (para 363 as substituted: see note 5 supra). As to deportation of family members see para 161 post. As to the right to appeal against the decision to make a deportation order under the Immigration Act 1971 s 3(5)(b) see para 176 post.

7 For the meaning of 'limited leave' see para 148 note 2 ante. It has been held that where the Secretary of State had revoked a decision to grant indefinite leave to remain before the decision had been communicated to the applicant, no leave had been granted and he had power in law to make a deportation order against her for breach of conditions of her limited leave to remain: see *Rafiq v Secretary of State for the Home Department* [1998] INLR 349, CA.

8 Ie under the Immigration Act 1971 s 3(5)(a) prior to its substitution by the Immigration and Asylum Act 1999.

9 A deportation order requires the subject to leave the United Kingdom, authorises his detention until he is removed, prohibits him from re-entering the country for as long as it is in force and invalidates any leave to enter or remain given to him before the order is made or while it is in force: Immigration Rules para 362.

10 See the Immigration and Asylum Act 1999 s 9; and the Immigration (Regularisation Period for Overstayers) Regulations 2000, SI 2000/265, which came into force on 8 February 2000 (see reg 1). These provisions enabled a person to regularise his stay in the United Kingdom. The regularisation period referred to in the Immigration and Asylum Act 1999 s 9 ran from 8 February 2000 to 1 October 2000: see s 9(2), (3); and the Immigration (Regularisation Period for Overstayers) Regulations 2000, SI 2000/265, reg 3.

If the proposed deportee had been in the United Kingdom for less than seven years before the decision to deport, the right to appeal against the decision to make a deportation order under the Immigration Act 1971 s 3(5)(a) (as originally enacted) was limited to the issue of whether the Secretary of State had power in law to deport for the reasons stated in the notice: see the Immigration Act 1988 s 5(1), (2) (now repealed). The appellate authorities were restricted to examining whether, in the particular case, the power to deport existed and not to examining the manner of its exercise: *R v Secretary of State for the Home Department, ex p Oladehinde and Alexander* [1991] 1 AC 254, [1990] 3 All ER 393, [1991] Imm AR 111, HL, approving *R v Secretary of State for the Home Department, ex p Malhi* [1991] 1 QB 194, [1990] 2 All ER 357, CA. Certain persons were exempt from the operation of this provision by order made under the Immigration Act 1988 s 5(2), (3) (now repealed): see the Immigration (Restricted Right of Appeal against Deportation) (Exemption) Order 1993, SI 1993/1656 (amended by SI 1996/2145; now lapsed). Any person who would have been last given leave to enter the United Kingdom seven years or more before the date of the decision to make a deportation order against him but for his having obtained a subsequent leave after any absence from the United Kingdom

within the period limited for the duration of the earlier leave, and any person whose limited leave to enter or remain in the United Kingdom has been curtailed by the Secretary of State under the Asylum Immigration Appeals Act 1993 s 7(1), (1A) (as added), is exempt from the Immigration Act 1988 s 5(1) (now repealed): Immigration (Restricted Right of Appeal against Deportation) (Exemption) Order 1993, SI 1993/1656, art 2.

As to adequacy of reasons given in the notice of intention to deport under the Immigration Act 1971 s 3(5)(a) (as originally enacted) see *R v Immigration Appeal Tribunal, ex p Razaque* [1989] Imm AR 451; *R v Secretary of State for the Home Department, ex p Kaur* [1996] Imm AR 359 (a person granted leave to enter the United Kingdom as a spouse, and who then divorces and remarries, may be deported if he is refused variation of leave and overstays).

Persons who are unlawfully in the United Kingdom as overstayers or in breach of conditions, or having obtained leave to remain by deception, who had not been served with decisions to deport before 2 October 2000, and who did not apply to regularise under the Immigration and Asylum Act 1999 s 9, are subject to administrative removal: see paras 152 ante, 169 post.

11 Immigration Act 1971 s 3(6) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2); Immigration Rules para 363(iii) (as substituted: see note 5 supra). For these purposes, a person is deemed to have attained the age of 17 at the time of his conviction if, on consideration of any available evidence, he appears to the court making or considering a recommendation for deportation to have done so: Immigration Act 1971 s 6(3)(a). Whether an offence is one for which a person is punishable with imprisonment is to be determined without regard to any enactment restricting the imprisonment of young offenders or persons who have not previously been sentenced to imprisonment: s 6(3)(b) (amended by the Criminal Justice Act 1972 s 64(1), Sch 5; and the Criminal Justice Act 1982 s 77, Sch 15).

The criminal courts are concerned with potential detriment to the United Kingdom caused by a defendant's criminal behaviour (*R v Caird* (1970) 54 Cr App Rep 499, CA; *R v Nazari* [1980] 3 All ER 880, CA) and not with immigration status (*R v Akan* [1973] QB 491, [1972] 3 All ER 285, CA; *R v Kraus* (1982) 4 Cr App Rep (S) 113, CA; *R v Compassi* (1987) 9 Cr App Rep (S) 270, CA; *R v Okelola* (1992) 13 Cr App Rep (S) 560, CA). The likelihood of re-offending is always relevant: see *R v Escauriaza* (1987) 87 Cr App Rep 344, CA; *R v Spura* (1988) 10 Cr App Rep (S) 376, CA. In the guideline case of *R v Nazari* supra it was held that the courts are not concerned with the political system in the offender's home country, but this must be modified in the light of the courts' obligations under the Human Rights Act 1998 (see the text and note 39 infra). The courts will have regard to the effect of a recommendation on innocent third parties, and have no desire to break up families: *R v Nazari* supra; *R v Cravioto* (1990) 12 Cr App Rep (S) 71, CA; *R v Shittu* (1992) 14 Cr App Rep (S) 283, CA. The court must decide whether the proposed interference with family or private life would be no more than necessary to pursue the legitimate objective of deportation, which is the prevention of disorder or crime: see the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8; and *B v Secretary of State for the Home Department* [2000] Imm AR 478, CA. As to the criteria for a recommendation in cases concerning EEA nationals see para 226 post. As to EEA nationals see para 225 et seq post. See also CIVIL PROCEDURE; CRIMINAL LAW, EVIDENCE AND PROCEDURE; EVIDENCE.

A judge who recommends deportation in the course of sentencing must give his reasons for making that recommendation: *R v Rodney* [1996] 2 Cr App Rep (S) 230, CA.

Although a recommendation by a sentencing judge carries real and, in many cases, decisive weight and affords a presumption in favour of deportation, and although the reasons given by the sentencing judge are material facts for the Secretary of State to take into account, such a recommendation simply initiates the Secretary of State's task and the sentencing judge's reasons and decisions should not be substituted for what the Secretary of State has to decide: *R v Secretary of State for the Home Department, ex p Ali Dinc* [1999] INLR 256, [1999] Imm AR 380, CA. See also *Patel v Secretary of State for the Home Department* [1986] Imm AR 457, IAT (notice of intention to deport served during a trial in which no recommendation was made upheld). Where it is open to the Secretary of State to deport a person under the Immigration Act 1971 s 3(5) (as substituted) or under s 3(6) (as amended), the Secretary of State is entitled to proceed under s 3(6) (as amended) although that route does not afford the person a right of appeal: *R v Secretary of State for the Home Department, ex p Kusi-Boahem* [1988] Imm AR 540. However, in the case of EEA nationals, the Secretary of State's policy is not to rely on a recommendation but to institute deportation proceedings under s 3(5)(a) (as substituted), to ensure a right of appeal: *Immigration Directorates' Instructions* Chapter 13 (Deportation) Section 1 paragraph 2.8 (September 2001).

12 Immigration Act 1971 s 6(1). A person who, on being charged with an offence, is found to have committed it is to be regarded (notwithstanding any enactment to the contrary) as a person convicted of the offence, even if the court does not proceed to conviction: s 6(3). Notwithstanding any rule or practice restricting the matters which ought to be taken into account in dealing with an offender who is sentenced to imprisonment, a recommendation for deportation may be made in respect of an offender who is sentenced to imprisonment for life: s 6(4).

13 Ibid s 6(2) (amended by the British Nationality Act 1981 Sch 4 para 2). The notice requirement is strict. If it is not followed an appeal against the recommendation will be allowed: *R v Nazari* [1980] 3 All ER 880, [1980] 1 WLR 1366, CA; *R v Omojudi* [1992] Imm AR 104, CA. There is power to adjourn after conviction to enable the

required seven days' notice to be given or, where notice has been given less than seven days previously, to elapse: see the Immigration Act 1971 s 6(2) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 105; and the Criminal Procedure (Scotland) Act 1975 s 461(1), Sch 9 para 47). A judge has power at common law to adjourn deportation questions, apart from the power conferred by the Immigration Act 1971: *R v Tuegal* [2000] 2 All ER 872, CA. As to exemptions from deportation see para 162 post.

14 Immigration Act 1971 s 6(5). There is no appeal within the immigration appeal system against the making of a deportation order on the recommendation of a court; but there is a right of appeal to a higher court against the recommendation itself: Immigration Rules para 378 (substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 57). A deportation order may not be made while it is still open to the person to appeal against the relevant conviction, sentence or recommendation, or while such an appeal is pending but a deportation order may not be made while any such appeal remains pending: Immigration Rules para 378 (as so substituted).

15 Immigration Act 1971 s 6(5)(a) (amended by the Criminal Justice (Scotland) Act 1980 s 83(3), Sch 8; and the Criminal Justice Act 1982 ss 77, 78, Sch 15 para 15, Sch 16).

16 Immigration Act 1971 s 6(6).

17 Immigration Rules para 364. Disparate treatment may found a successful appeal: see *R v Immigration Appeal Tribunal, ex p Alavi-Veighoe* (20 July 1989) Lexis, Enggen Library, Cases File (where the principal in a criminal enterprise is allowed to stay, it is inconsistent and unfair to deport the person playing a minor role). The publication of a policy gives rise to a legitimate expectation that it will be applied consistently: *Khan v Immigration Appeal Tribunal* [1984] Imm AR 68, CA (refusal of entry clearance); *Gyeabour v Secretary of State for the Home Department* [1989] Imm AR 94, IAT (long residence concession); *R v Secretary of State for the Home Department, ex p Amankwah* [1994] Imm AR 240 (Secretary of State's policy on deportation of spouses of persons settled in United Kingdom). But the requirement to be 'consistent and fair' does not enable a non-European Community national to benefit from the privileges of European Community citizens (see para 226 post) in this respect: see *R v Secretary of State for the Home Department, ex p Al-Sabah* [1992] 2 CMLR 676, CA.

18 See the text and notes 7-10 supra.

19 Immigration Rules paras 363A, 364 (para 363A added, and para 364 amended, by Statement of Changes in Immigration Rules (Cm 4851) (2000) paras 54-55). The Secretary of State is entitled to delegate his power to make decisions to deport overstayers to immigration officers of sufficient seniority and experience provided there is no conflict with their statutory duties in particular cases: *R v Secretary of State for the Home Department, ex p Oladehinde* [1991] 1 AC 254, [1990] 3 All ER 393, [1991] Imm AR 111, HL. A person with 14 years' continuous residence in the United Kingdom of any legality is normally granted indefinite leave to remain, in the absence of strong countervailing factors such as an extant criminal record or deliberate and blatant attempts to evade or circumvent control: *Immigration Directorates' Instructions* Chapter 18 (The long residence concession) paragraph 2 (December 2000). An overstayer is not entitled to benefit from the 14-year concession where part of his 14 years' residence is acquired because of the operation of the appeals process: *R v Secretary of State for the Home Department, ex p Ofori* [1994] Imm AR 581. See also *Musah v Secretary of State for the Home Department* [1995] Imm AR 236, CA (a person who has evaded service of a deportation order for some of the 14 years is not entitled to rely on the 14-year rule); cf *R v Secretary of State for the Home Department, ex p Popatia* [2000] INLR 587 (a person never served with a decision to deport is entitled to count all the time in the United Kingdom, including the period after the decision, for the purposes of the concession).

20 Immigration Rules para 364 (as amended: see note 19 supra). The listed circumstances are broader than simple compassionate circumstances, and include everything properly persuasive for or against deportation: *Kamara v Secretary of State for the Home Department* (20 July 1999, unreported), IAT. As to deportation where the deportee has relatives living in the United Kingdom see para 155 ante. The impact of the proposed deportation on third parties is to be taken into account: *R v Immigration Appeal Tribunal, ex p Bakhtaur Singh* [1986] 1 WLR 910, [1986] Imm AR 352, HL (effect of the deportation of an Indian folk musician on third party interests, namely those of the Sikh community). Only what is irrelevant to the decision should be excluded but relevance can only be determined in relation to the facts of a particular case: *R v Immigration Appeal Tribunal, ex p Bakhtaur Singh* supra. The appellate authority or the Secretary of State is not obliged to respond positively to a request by the police that an informer should not be deported: *CM v Secretary of State for the Home Department* [1997] Imm AR 336, CA. Deportation must be proportionate to the offending in question: *B v Secretary of State for the Home Department* [2000] 2 CMLR 1086, CA.

On appeal, the appellate authorities may take into account evidence of factors in existence at the date of the decision to deport, although unknown to the Secretary of State: *R v Immigration Appeal Tribunal, ex p Hassanin* [1987] 1 All ER 74, [1986] 1 WLR 1448, CA. See also the Immigration and Asylum Act 1999 s 77(4)(b); and para 188 post.

21 Ie under the Immigration Act 1971 s 3(5) (as substituted), s 3(6) (as amended): see the text and notes 5-11 supra.

22 Ibid s 5(6) (amended by the Immigration Act 1988 s 10, Schedule para 2).

23 See the Immigration and Asylum Act 1999 s 63(1)(a). However, s 63 does not entitle a person to appeal against a decision to make a deportation order against him if the ground of the decision was that the deportation is conducive to the public good as being in the interests of national security or of the relations between the United Kingdom and any other country or for other reasons of a political nature: s 64(1). In those circumstances a person may appeal to the Special Immigration Appeals Commission: see the Special Immigration Appeals Commission Act 1997 s 2 (as amended); and para 165 post. As to the meaning of 'country' see para 204 note 19 post. A deportation order is not to be made against a person under the Immigration Act 1971 s 5(1) (see the text and note 25 *infra*) while an appeal may be brought against the decision to make the order: Immigration and Asylum Act s 63(2). The right of appeal does not apply where the decision is pursuant to a court recommendation: see *R v Secretary of State for the Home Department, ex p Kusi-Boahem* [1988] Imm AR 540. Where a decision to deport has been taken otherwise than on a recommendation, a notice is given to the person concerned informing him of the decision and of his right of appeal: Immigration Rules para 381 (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 60). As to appeals generally see para 176 post.

24 Ie under the Immigration Act 1971 s 3(5) (as substituted) (see the text and notes 1-6 *supra*) or s 3(6) (as amended) (see the text and note 11 *supra*).

25 Ibid s 5(1). A defect in an order does not render invalid the antecedent decision that a person is liable for deportation: *R v Immigration Appeal Tribunal, ex p Mehmet* [1977] 2 All ER 602, [1977] 1 WLR 795, DC. As to proof of an order see para 86 note 15 *ante*.

The fact that judicial review proceedings are pending in respect of a deportation order or a refusal to revoke a deportation order does not give rise to a legitimate expectation that the deportation will not go ahead: *R v Secretary of State for the Home Department, ex p Yesufu* [1987] Imm AR 366. However, in practice the Home Office does not normally remove a person when judicial review proceedings are pending: see *R v Secretary of State for the Home Department, ex p Muboyayi* [1992] QB 244 at 259, [1991] 4 All ER 72 at 82, CA, per Lord Donaldson MR (in relation to persons refused leave to enter).

26 Immigration Act 1971 s 5(1). Thus, where a person returns to the United Kingdom while a deportation order is in force against him, he may lawfully be deported again under the original order: Immigration Rules para 388. The Secretary of State considers every such case in the light of all the relevant circumstances before deciding whether to enforce the order: see Immigration Rules para 388. There is a right of appeal against destination under the Immigration and Asylum Act 1999 ss 63(3), (4), 67: see para 176 *et seq* post.

27 Immigration Act 1971 s 5(2). It is only the Secretary of State who can revoke a deportation order. It follows that the grant of an entry clearance by an entry clearance officer who is unaware of the existence of an extant deportation order does not act as a revocation of the deportation order: *Watson v Immigration Officer, Gatwick* [1986] Imm AR 75.

28 Immigration Act 1971 s 5(2) (amended by the British Nationality Act 1981 Sch 4 para 2). This does not apply to a person who becomes the spouse of a British citizen: *R v Secretary of State for the Home Department, ex p Hayden* [1988] Imm AR 555.

29 See the Immigration and Asylum Act 1999 s 63(1)(b); and para 176 post.

30 Immigration Rules para 392.

31 Immigration Rules para 392. As to the Home Office see para 1 *ante*.

32 Immigration Rules para 390.

33 Immigration Rules para 391.

34 Immigration Rules para 391.

35 Immigration Rules para 391.

36 Immigration Rules para 391. A deportation order is in force from the day it is signed, not from the day it is enforced: see *Peerbocus v Secretary of State for the Home Department* [1987] Imm AR 331, IAT.

37 Ie under the Mental Health Act 1983 s 3 or s 37: see MENTAL HEALTH vol 30(2) (Reissue) paras 461, 491.

38 See *R (on the application of X) v Secretary of State for the Home Department* [2001] 1 WLR 740, CA. See also *R v Secretary of State for the Home Department, ex p Talmasani* [1987] Imm AR 32, CA (the Mental Health

Act 1983 requires the Secretary of State to make arrangements for the person's reception in the country of destination). See MENTAL HEALTH vol 30(2) (Reissue) para 548.

39 Ie the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 122 et seq.

40 Immigration Rules para 380 (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 59). See also the Human Rights Act 1998 s 6. The reference to the Refugee Convention is a reference to the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) and Protocol (New York, 31 January 1967; TS 15 (1969); Cmnd 3906). Nothing in the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) prevents a state from exercising effective immigration controls, provided that when considering the deportation of an individual who has a family in the United Kingdom the need to maintain such controls is weighed against the need to respect his right to enjoy a family life: *R v Secretary of State for the Home Department, ex p Uzun* [1998] Imm AR 314. When a court reviews a decision which is required by the Human Rights Act 1998 to comply with the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the court will not substitute its own decision for that of the executive but will review it to see if it was permitted by law: *R v Secretary of State for the Home Department, ex p Isiko* [2001] INLR 175; *R (on the application of Samaroo) v Secretary of State for the Home Department* [2001] EWCA Civ 1139. The role of the courts is supervisory and as the decision-maker often has an area of discretion, there has to be a principled distance between the court's adjudication and the decision-maker's decision: *R (on the application of Mahmood) v Secretary of State for the Home Department* [2001] 2 FCR 63, [2001] 1 WLR 840.

As to deportation decisions engaging human rights see eg *R v Secretary of State for the Home Department, ex p Turgut* [2001] 1 All ER 719, [2000] Imm AR 306, CA (removal of rejected asylum-seeker to Turkey did not breach the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 3); *R v Secretary of State for the Home Department, ex p M* [1999] Imm AR 548; *R v Secretary of State for the Home Department, ex p Kebbeh* (30 April 1999) Lexis, Enggen Library, Cases File; *R (on the application of Njai) v Secretary of State for the Home Department* (1 December 2000) Lexis, Enggen Library, Cases File (removal of vulnerable persons to conditions of destitution, sickness and misery may breach the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 3); *R v Secretary of State for the Home Department, ex p Gangadeen and Khan* [1998] 2 FCR 96, CA (policy on enforcement action against persons with family members settled in the United Kingdom complied with the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 8); *R v Secretary of State for the Home Department, ex p Ahmed and Patel* [1998] INLR 570, CA. See also *R v Secretary of State for the Home Department, ex p Isiko* supra; *R (on the application of Mahmood) v Secretary of State for the Home Department* supra; *R (on the application of Samaroo) v Secretary of State for the Home Department* supra (decisions to deport or remove complied with the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 8). As to the relevant principles in European Court of Human Rights jurisprudence see eg *Soering v United Kingdom* (1989) 11 EHRR 439; *Hilal v United Kingdom* (2001) 33 EHRR 2; *Bensaid v United Kingdom* (2001) 33 EHRR 10; *Chahal v United Kingdom* (1996) 23 EHRR 413; *D v United Kingdom* (1997) 24 EHRR 423; *Abdulaziz, Cabales and Balkandali v United Kingdom* (1985) 7 EHRR 471; *Beldjoudi v France* (1992) 14 EHRR 801; *Berrehab v Netherlands* (1988) 11 EHRR 322; *Boughanemi v France* (1996) 22 EHRR 228; *Boultif v Switzerland* [2001] 2 FLR 1228; [2001] Fam Law 875; *Ciliz v Netherlands* [2000] 2 FLR 469; *Fadele v United Kingdom* (1990) HRD 1(1); *Gul v Switzerland* (1996) 22 EHRR 93; *Lamguindaz v United Kingdom* (1993) 17 EHRR 213; *Moustaquim v Belgium* (1991) 13 EHRR 802; *Nasri v France* (1995) 21 EHRR 458.

41 See the Immigration and Asylum Act 1999 s 15; and para 164 post.

42 Anti-terrorism, Crime and Security Act 2001 s 22(1). As to the derogation of the United Kingdom government from the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 5(1) in relation to suspected international terrorists see para 167 post. As to the expiry of the provisions of the Anti-terrorism, Crime and Security Act 2001 ss 21-23 see para 168 post.

The types of enforcement action involved are: (1) refusing leave to enter or remain in the United Kingdom in accordance with provision made by virtue of any of the provisions of the Immigration Act 1971 ss 3-3B (as added and amended) (control of entry to the United Kingdom) (see para 86 ante); (2) varying a limited leave to enter or remain in the United Kingdom; (3) recommending deportation in accordance with s 3(6) (as amended) (see the text and note 11 supra); (4) taking a decision to make a deportation order under s 5(1) (see the text and note 25 supra); (5) making a deportation order under s 5(1); (6) refusing to revoke a deportation order; (7) cancelling leave to enter the United Kingdom in accordance with Sch 2 para 2A (as added) (see para 143 ante); (8) giving directions for a person's removal under any of the provisions of Sch 2 paras 8-10 (see para 152 ante) or Sch 2 paras 12-14 (see para 153 ante); (9) giving directions for a person's removal under the Immigration and Asylum Act 1999 s 10 (see para 154 ante); or (10) issuing a notice of intention to deport in accordance with regulations under Sch 4 para 1 (see para 187 post): Anti-terrorism, Crime and Security Act 2001 s 22(2)(a)-(j).

43 Ie of a kind specified in *ibid* s 22(2): see note 42 supra.

44 Ie under *ibid* s 21.

45 le in reliance on *ibid* s 22(1): see the text to note 42 *supra*.

46 *Ibid* s 22(3).

UPDATE

160-166 Deportation

For provision relating to the deportation of criminals see PARA 160A.

160 Liability for deportation

NOTE 5--As to guidance in relation to the hearing of judicial review applications relating to deportation see *R (on the application of Madan) v Secretary of State for the Home Department*; *R (on the application of Kapoor) v Secretary of State for the Home Department* [2007] EWCA Civ 770, [2008] 1 All ER 973.

TEXT AND NOTE 6--Refers also to the civil partner of a person ordered to be deported: Immigration Rules paras 363(ii), 365-367 (amended by Statement of Changes in Immigration Rules (HC Paper 2005-06) no 582) paras 40-43; Immigration Rules para 367 amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1337) para 2).

NOTE 11--See also *R v Ukoh* (2004) Times, 28 December, CA and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 9.

NOTE 13--Cf *R v Abdi* [2007] EWCA Crim 1913, [2007] All ER (D) 487 (Jul) (non-compliance with the notice requirement did not necessarily render a recommendation for deportation invalid).

NOTE 14--Immigration Rules para 378 amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 951) para 2.

TEXT AND NOTES 17-19--Subject to the Immigration Rules para 380, while each case will be considered on its merits, where a person is liable to deportation the presumption is that the public interest requires deportation. The Secretary of State will consider all relevant factors in considering whether the presumption is outweighed in any particular case, although it will only be in exceptional circumstances that the public interest in deportation will be outweighed in a case where it would not be contrary to the Human Rights Convention (see the Human Rights Act 1998 s 6) and the Convention and Protocol relating to the Status of Refugees (see PARA 164 NOTE 2) to deport. The aim is an exercise of the power of deportation which is consistent and fair as between one person and another, although one case will rarely be identical with another in all material respects. In the cases detailed in the Immigration Rules para 363A deportation will normally be the proper course where a person has failed to comply with or has contravened a condition or has remained without authority: Immigration Rules para 364 (substituted by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1337) para 1). The Immigration Rules para 364 does not apply where the Secretary of State must make a deportation order in respect of a foreign criminal under the UK Borders Act 2007 s 32(5) (see PARA 160A.1): Immigration Rules para 364A (added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 951) para 1).

NOTE 19--See also *AL (Serbia) v Secretary of State for the Home Department*; *R (on the application of Rudi) v Secretary of State for the Home Department* [2008] UKHL 42, [2008] 4 All ER 1127.

NOTE 23--It is for the Secretary of State first to assess the public interest when deciding whether to issue a deportation order, and an adjudicator should take proper consideration of the Secretary of State's view: *R (on the application of N, Kenya) v Secretary of State for the Home Department* [2004] EWCA Civ 1094, (2004) Times, 13 September. See also *Nguyen v Secretary of State for the Home Department* [2006] All ER (D) 380 (Mar), CA (failure to take into account fact that child of deportee was British citizen).

TEXT AND NOTES 33-36--Reference to an applicant with a serious criminal record is now to an applicant who has been deported following conviction for a criminal offence, words 'for a long term of years' omitted and provision now made in relation to spent convictions: Immigration Rules para 391 (amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 607) para 40).

NOTE 39--A member state must show that there is a good reason to treat the assurances of a country with a record for disregarding fundamental human rights as providing a reliable guarantee that a person, if deported, will not be subject to a real risk of inhuman treatment: *RB (Algeria) v Secretary of State for the Home Department*; *U (Algeria) v Secretary of State for the Home Department*; *Othman v Secretary of State for the Home Department* [2009] UKHL 10, [2009] 4 All ER 1045.

NOTE 40--See also *R v Carmona* [2006] EWCA Crim 508, [2006] 1 WLR 2264 (sentencing court not bound to consider human rights when recommending deportation); *AS (Libya) v Secretary of State for the Home Department* [2008] EWCA Civ 289, [2008] All ER (D) 129 (Apr); and *Beoku-Betts v Secretary of State for the Home Department* [2008] UKHL 39, [2008] 4 All ER 1146 (court obliged to consider effect of deportation on person's family).

TEXT AND NOTES 42-46--2001 Act ss 21-23 repealed: Prevention of Terrorism Act 2005 s 16(2)(a).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(v) Deportation/160A. Deportation of criminals.

160A. Deportation of criminals.

The following provisions come into force on 1 August 2008 for certain purposes: SI 2008/1818.

1. Automatic deportation

The deportation of a foreign criminal¹ is conducive to the public good². The Secretary of State must make a deportation order³ in respect of a foreign criminal⁴.

1 In the UK Borders Act 2007 s 32 'foreign criminal' means a person (1) who is not a British citizen, (2) who is convicted in the United Kingdom of an offence, and (3) to whom Condition 1 or 2 applies: s 32(1). 'British citizen' has the same meaning as in the Immigration Act 1971 s 3(5) (and s 3(8) (burden of proof) applies): 2007 Act s 38(4)(a). For the purposes of s 32 a person subject to an order under the Criminal Procedure (Insanity) Act 1964 s 5 (insanity etc) has not been convicted of an offence: 2007 Act s 38(3). Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months: s 32(2). Condition 2 is that (a) the offence is specified by order of the Secretary of State under the Nationality, Immigration and Asylum Act 2002 s 72(4)(a) (serious criminal), and (b) the person is sentenced to a period of imprisonment: 2007 Act s 32(3).

See *EN (Serbia) v Secretary of State for the Home Department*; *KC (South Africa) v Secretary of State for the Home Department* [2008] EWCA Civ 630, [2008] All ER (D) 289 (Jun) (Secretary of State exceeded powers when

making an order listing criminal offences which would be treated as justifying deportation). Very serious reasons are required to justify the removal of a settled migrant who has lawfully spent all or the major part of his childhood in the host country, especially where he committed the relevant offences as a juvenile: *JO (Uganda) v Secretary of State for the Home Department* [2010] EWCA Civ 10, [2010] All ER (D) 137 (Jan).

In the 2007 Act s 32(2) the reference to a person who is sentenced to a period of imprisonment of at least 12 months (i) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect), (ii) does not include a reference to a person who is sentenced to a period of imprisonment of at least 12 months only by virtue of being sentenced to consecutive sentences amounting in aggregate to more than 12 months, (iii) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for at least 12 months, and (iv) includes a reference to a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for 12 months): s 38(1). In head (b) the reference to a person who is sentenced to a period of imprisonment (A) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it is to take effect), and (B) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders): s 38(2).

In an appropriate case, a court may structure a sentence for more than one offence in such a way that the offender avoids liability to deportation under s 32: see *R v Hakimzadeh* [2009] EWCA Crim 959, [2010] 1 Cr App Rep (S) 49, [2009] All ER (D) 210 (Jun).

2 2007 Act s 32(4). Section 32(4) applies for the purposes of the Immigration Act 1971 s 3(5)(a): 2007 Act s 32(4).

3 'Deportation order' means an order under the Immigration Act 1971 s 5, and by virtue of s 3(5): 2007 Act s 38(4)(c).

4 Ibid s 32(5). Section 32(5) is subject to s 33 (see PARA 160A.2): s 32(5).

Section 32(5) requires a deportation order to be made at a time chosen by the Secretary of State: s 34(1). A deportation order may not be made under s 32(5) while an appeal or further appeal against the conviction or sentence by reference to which the order is to be made (1) has been instituted and neither withdrawn nor determined, or (2) could be brought: s 34(2). For the purpose of head (2), (a) the possibility of an appeal out of time with permission must be disregarded, and (b) a person who has informed the Secretary of State in writing that the person does not intend to appeal is treated as being no longer able to appeal: s 34(3). The Secretary of State may withdraw a decision that s 32(5) applies, or revoke a deportation order made in accordance with s 32(5), for the purpose of (i) taking action under the Immigration Acts or rules made under the Immigration Act 1971 s 3 (immigration rules), and (ii) subsequently taking a new decision that the 2007 Act s 32(5) applies and making a deportation order in accordance with s 32(5): s 34(4).

The Secretary of State may not revoke a deportation order made in accordance with s 32(5) unless (1) he thinks that an exception under s 33 applies, (2) the application for revocation is made while the foreign criminal is outside the United Kingdom, or (3) s 34(4) applies: s 32(6). Section 32(5) does not create a private right of action in respect of consequences of non-compliance by the Secretary of State: s 32(7). See *R (on the application of Ahmed) v Secretary of State for the Home Department* [2010] EWHC 625 (Admin), [2010] All ER (D) 274 (Mar) (detainee's time of return was uncertain and close to arbitrary and hence unlawful).

Where a deportation order against a foreign criminal states that it is made in accordance with s 32(5) ('the automatic deportation order') s 37 has effect in place of the words from 'A deportation order ... after the making of the deportation order against him' in the Immigration Act 1971 s 5(3) (see PARA 161): 2007 Act s 37(1). A deportation order may not be made against a person as belonging to the family of the foreign criminal after the end of the relevant period of eight weeks: s 37(2). In the case of a foreign criminal who has not appealed in respect of the automatic deportation order, the relevant period begins when an appeal can no longer be brought (ignoring any possibility of an appeal out of time with permission): s 37(3). In the case of a foreign criminal who has appealed in respect of the automatic deportation order, the relevant period begins when the appeal is no longer pending (within the meaning of the Nationality, Immigration and Asylum Act 2002 s 104): 2007 Act s 37(4).

2. Exceptions

The following provisions¹ create a number of exceptions to the automatic deportation procedure and preserve existing exemptions from deportation².

Exception 1 is where removal of the foreign criminal³ in pursuance of the deportation order⁴ would breach (1) a person's Convention rights⁵, or (2) the United Kingdom's obligations under the Refugee Convention⁶.

Exception 2 is where the Secretary of State thinks that the foreign criminal was under the age of 18 on the date of conviction⁷.

Exception 3 is where the removal of the foreign criminal from the United Kingdom in pursuance of a deportation order would breach rights of the foreign criminal under the Community treaties⁸.

Exception 4 is where the foreign criminal (a) is the subject of a certificate under the Extradition Act 2003⁹, (b) is in custody pursuant to arrest¹⁰, (c) is the subject of a provisional warrant¹¹, (d) is the subject of an authority to proceed¹², or (e) is the subject of a provisional warrant¹³.

Exception 5 is where any of the following has effect in respect of the foreign criminal (i) a hospital order or guardianship order¹⁴, (ii) a hospital direction¹⁵, (iii) a transfer direction¹⁶, or (iv) an order or direction under a provision which corresponds to a provision specified in heads (1) to (iv) above and which has effect in relation to Northern Ireland¹⁷.

Exception 6 is where the Secretary of State thinks that the application of the specified provisions¹⁸ would contravene the United Kingdom's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005)¹⁹.

The application of an exception (A) does not prevent the making of a deportation order; (B) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good²⁰.

1 Ie the UK Borders Act 2007 s 33.

2 See *ibid* s 33(1) which provides that s 32(4), (5) (see PARA 160A.1) (1) does not apply where an exception in s 33 applies (subject to s 33(7)), and (2) is subject to the Immigration Act 1971 ss 7 and 8 (Commonwealth citizens, Irish citizens, crew and other exemptions).

3 For the meaning of 'foreign criminal' see PARA 160A.1.

4 For the meaning of 'deportation order' see PARA 160A.1.

5 'Convention rights' has the same meaning as in the Human Rights Act 1998: 2007 Act s 38(4)(b).

6 *Ibid* s 33(2). 'The Refugee Convention' means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and its Protocol: 2007 Act s 38(4)(d).

7 *Ibid* s 33(3).

8 *Ibid* s 33(4).

9 Ie under the Extradition Act 2003 s 2 or 70.

10 Under *ibid* s 5.

11 Under *ibid* s 73.

12 Under the Extradition Act 1989 s 7 or an order under Sch 1 para 4(2).

13 Under *ibid* s 8 or of a warrant under Sch 1 para 5(1)(b): 2007 Act s 33(5).

14 Under the Mental Health Act 1983 s 37.

15 Under *ibid* s 45A.

16 Under *ibid* s 47.

17 2007 Act s 33(6).

18 Ibid s 32(4), (5).

19 Ibid s 33(6A) (added by Criminal Justice and Immigration Act 2008 s 146).

20 2007 Act s 33(7). But s 32(4) (see PARA 160A.1) applies despite the application of Exception 1 or 4: s 33(7).

3. Detention

A person who has served a period of imprisonment may be detained under the authority of the Secretary of State (1) while the Secretary of State considers whether the provision relating to automatic deportation¹ applies, and (2) where the Secretary of State thinks that that provision applies, pending the making of the deportation order². Where a deportation order is made³ the Secretary of State must exercise the power of detention⁴ unless in the circumstances the Secretary of State thinks it inappropriate⁵. A court determining an appeal against conviction or sentence may direct release from detention⁶.

1 Ibid whether the UK Borders Act 2007 s 32(5) (see PARA 160A.1) applies.

2 Ibid s 36(1).

Provisions of the Immigration Act 1971 which apply to detention under Sch 3 para 2(3) (detention pending removal) apply to detention under the 2007 Act s 36(1) (including provisions about bail): s 36(4). The 1971 Act Sch 3 para 2(5) (residence, occupation and reporting restrictions) applies to a person who is liable to be detained under the 2007 Act s 36(1): s 36(5).

3 Ibid in accordance with s 32(5).

4 Ibid under the Immigration Act 1971 Sch 3 para 2(3).

5 2007 Act s 36(2).

6 Ibid s 36(3), referring to detention under s 36(1) or (2).

UPDATE

160-166 Deportation

For provision relating to the deportation of criminals see PARA 160A.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(v) Deportation/161. Deportation of family members.

161. Deportation of family members.

For the purpose of deportation the following persons are to be regarded as belonging to another person's family: (1) where that other person is a man, his wife and his or her children under the age of 18¹; and (2) where that other person is a woman, her husband and her or his children under the age of 18². A deportation order cannot be made against a person as belonging to the family of another person if more than eight weeks have elapsed since the other person left the United Kingdom after the making of a deportation order against him³; and a deportation order made against a person on that ground ceases to have effect if he ceases to

belong to the family of the other person⁴, or if the deportation order made against the other person ceases to have effect⁵.

The Secretary of State does not normally decide to deport the spouse of a deportee where the spouse has qualified for settlement in his own right or has been living apart from the deportee⁶, nor does he normally decide to deport the child of a deportee if the child and his mother or father are living apart from the deportee or the child has left home and established himself on an independent basis or has married before deportation came into prospect⁷.

In considering whether to deport or remove a spouse and children with the head of the family, the Secretary of State must take account of all relevant factors known to him⁸ including: (a) the ability of the spouse to maintain herself and the children in the United Kingdom, or to be maintained by relatives or friends without charge to public funds⁹, not merely for a short period but for the foreseeable future; (b) in the case of a child of school age, the effect of removal on his education; (c) the practicability of any plans for a child's care and maintenance in this country if one or both of his parents were deported; and (d) any representations received from or on behalf of the spouse and children¹⁰.

1 Immigration Act 1971 s 5(4)(a).

2 Ibid s 5(4)(b) (substituted by the Asylum and Immigration Act 1996 s 12(1), Sch 2 para 2). 'Wife' includes each of two or more wives: Immigration Act 1971 s 5(4). For these purposes, an adopted child, whether legally adopted or not, may be treated as the child of the adopter and, if legally adopted, is to be regarded as the child only of the adopter; and an illegitimate child (if not adopted) is to be regarded as the child of the mother: s 5(4). 'Legally adopted' means adopted in pursuance of an order made by any court in the United Kingdom and Islands, under a Convention adoption, or by any adoption specified as an overseas adoption by an order of the Secretary of State under the Adoption Act 1976 s 72(2) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 375); Immigration Act 1971 s 33(1). For the meaning of 'United Kingdom and Islands' see para 83 note 12 ante; and as to the meaning of 'United Kingdom' see para 5 note 1 ante. 'Convention adoption' has the same meaning as in the Adoption Act 1976 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 375): Immigration Act 1971 s 33(1).

On appeal against a decision to deport as a family member, the appellant is not allowed, for the purpose of showing that he does not or did not belong to another person's family, to dispute any statement made with a view to the appellant obtaining leave to enter or remain in the United Kingdom (including a statement made to obtain entry clearance): Immigration and Asylum Act 1999 s 64(5). This provision does not apply if the appellant shows that the statement was not made by him or with his authority and that when he took the benefit of the leave, he did not know that any such statement had been made to obtain it or, if he did know, he was under 18: s 64(6). As to entry clearance see para 96 ante.

3 Immigration Act 1971 s 5(3). In calculating the eight-week period, any time during which an appeal is pending is disregarded: Immigration and Asylum Act 1999 Sch 4 para 19; Special Immigration Appeals Commission Act 1997 Sch 2 para 3F (added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 118, 126). See further para 173 post. Where the Secretary of State decides to deport a member of a family as such, the right of appeal is notified and at the same time it is explained that it is open to the member of the family to leave the country voluntarily if he does not wish to appeal or if he appeals and his appeal is dismissed: Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 368.

The members of a non-British citizen's family who have had deportation proceedings instituted against them under these provisions are not liable to be deported if the original deportation order made against the head of the family is defective; and, if misconceived proceedings have been instituted against them, the grounds for deporting them may not be amended: *R v Immigration Appeal Tribunal, ex p Mehmet* [1977] 2 All ER 602, [1977] 1 WLR 795, DC.

Under the Immigration Act 1971 s 3(5)(b) (as amended) a dependent family member does not now become liable to deportation until a deportation order has been made against another member of his family.

4 ie by a child becoming 18, or by divorce of a spouse.

5 Immigration Act 1971 s 5(3). A person deported as a member of the family of a principal deportee may be able to seek readmission to the United Kingdom under the Immigration Rules if he reaches the age of 18 (and ceases to be subject to the deportation order) or, in the case of a spouse, if the marriage comes to an end: Immigration Rules para 389.

6 Immigration Rules para 365 (substituted by Statement of Changes in Immigration Rules (Cm 3365) (1996) para 26).

7 Immigration Rules para 366 (substituted by Statement of Changes in Immigration Rules (Cm 3365) (1996) para 27).

8 Like those listed in the Immigration Rules para 364: see para 160 text and notes 19-20 ante. As to the duty of the Secretary of State to abide by his own policy see *R v Secretary of State for the Home Department, ex p Gangadeen* [1998] 2 FCR 96, CA.

9 For the meaning of 'public funds' see para 99 note 8 ante.

10 Immigration Rules para 367. A child's right to education under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) First Protocol (Paris, 20 March 1952; TS 46 (1954); Cmd 9221) art 2 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) Reissue para 166) does not confer a right to remain in the United Kingdom: *R (on the application of Holub) v Secretary of State for the Home Department* [2001] 1 WLR 1359, CA.

UPDATE

160-166 Deportation

For provision relating to the deportation of criminals see PARA 160A.

161 Deportation of family members

TEXT AND NOTES 1, 2--Immigration Act 1971 s 5(4) amended so as to include reference to civil partners: Civil Partnership Act 2004 Sch 27 para 37.

NOTE 5--Or, in the case of a civil partner, if the civil partnership comes to an end: Immigration Rules para 389 (amended by Statement of Changes in Immigration Rules (HC Paper 2005-06) no 582) para 45).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(v) Deportation/162. Exemptions from deportation.

162. Exemptions from deportation.

The power to deport applies generally to all those who are subject to immigration control, including those who have been granted settlement in the United Kingdom¹.

However, where a Commonwealth citizen² or citizen of the Republic of Ireland was such a citizen at the coming into force of the Immigration Act 1971³ and was then ordinarily resident in the United Kingdom⁴: (1) he is not liable to deportation on any ground if at the time of the Secretary of State's⁵ decision he had for the last five years been ordinarily resident in the United Kingdom and Islands⁶; and (2) must not on conviction of an offence be recommended for deportation⁷ if at the time of the conviction he had for the last five years been ordinarily resident in the United Kingdom and Islands⁸.

In addition, there is no power to deport any person who is a member of a diplomatic mission⁹, any person who is a member of the family and forms part of the household of a member of a diplomatic mission¹⁰, or any other person entitled to the like immunity from jurisdiction as is conferred by the Diplomatic Privileges Act 1964 on a diplomatic agent¹¹. However, a member of a mission other than a diplomatic agent¹² is not to count as a member of a mission unless: (a) he was resident outside the United Kingdom and was not in the United Kingdom when he was

offered a post as such a member; and (b) he has not ceased to be such a member after having taken up the post¹³.

The Secretary of State may by order also exempt any person or class of persons, either unconditionally or subject to such conditions as may be imposed by or under the order, from all or any of the provisions of the Immigration Act 1971 relating to those who are not British citizens¹⁴.

The burden of establishing entitlement to these exemptions lies on the person asserting it¹⁵.

Citizens of member states of the European Communities enjoy special protection in relation to deportation¹⁶.

1 See the Immigration Act 1971 s 3(5) (as substituted); and para 160 ante. As to persons who are subject to immigration control see para 84 et seq ante. As to persons who have been granted settlement in the United Kingdom see para 134 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to Commonwealth citizens see para 11 ante.

3 1e 1 January 1973: see para 83 note 2 ante.

4 As to the meaning of 'United Kingdom' see para 5 note 1 ante. For the meaning of 'United Kingdom and Islands' see para 83 note 12 ante.

5 As to the Secretary of State see para 2 ante.

6 Immigration Act 1971 s 7(1)(b) (amended by the Immigration and Asylum Act 1999 Sch 14 paras 43, 46(b)). A person who has at any time become ordinarily resident in the United Kingdom or in any of the Islands is not to be treated for the purpose of these provisions as having ceased to be so by reason only of his having remained there in breach of the immigration laws: Immigration Act 1971 s 7(2). For the meaning of 'immigration laws' see para 83 ante. However, illegal residence cannot amount to ordinary residence if it was illegal from the beginning: *R v Bangoo* (1976) 120 Sol Jo 622, CA; *Re Abdul Manan* [1971] 2 All ER 1016, [1971] 1 WLR 859, CA; *R v Immigration Appeal Tribunal, ex p Perdikos* (1981) 131 NLJ 477; *Immigration Appeal Tribunal v Chelliah* [1985] Imm AR 192, CA; *R v Secretary of State for the Home Department, ex p Oni* (25 October 1999) Lexis, Enggen Library, Cases File. In calculating the period of five years, time spent in imprisonment or detention is to be disregarded if amounting to six months or more following an order made on conviction (two or more sentences for consecutive terms being treated as a single sentence): Immigration Act 1971 s 7(3), (4)(a), (c). A person is deemed to be detained by virtue of a sentence if he is unlawfully at large at any time when he is liable to imprisonment or detention by virtue of the sentence and, unless the sentence is passed after the material time, during any period of custody by which under any relevant enactment the term to be served under the sentence is reduced: s 7(4)(c). Provided the decision to make a deportation order is taken within the five years, the actual making of the deportation order is valid even if done after the expiry of the five years: *Re Ahmet Dogou Mehmet* (1976) 121 Sol Jo 53, CA.

The Immigration Act 1971 also provides that a person is not liable to deportation on the ground that the Secretary of State deems his deportation to be conducive to the public good if at the time of the Secretary of State's decision he had at all times since the Immigration Act 1971 came into force been ordinarily resident in the United Kingdom and Islands: see the Immigration Act 1971 s 7(1)(a) (amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 46(a)). This provision is now redundant.

For an unsuccessful attempt by the child of a Commonwealth citizen to claim the protection of accrued rights under the Immigration Act 1971 s 1(5) (repealed), against a decision to deport see *R v Secretary of State for the Home Department, ex p Menn* [1992] Imm AR 245, CA (to obtain the protection it was necessary to be under 16 at the date of the decision).

7 1e under the Immigration Act 1971 s 3(6) (as amended): see para 160 ante.

8 Ibid s 7(1)(c). A Commonwealth citizen with criminal convictions who is exempt from deportation under this provision cannot lawfully be refused re-entry after a short absence abroad: *R (on the application of Harris) v Secretary of State for the Home Department* [2001] EWHC 225 (Admin); affd [2002] EWCA Civ 100.

9 1e within the meaning of the Diplomatic Privileges Act 1964: see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 265 et seq.

10 *Gupta v Secretary of State for the Home Department* [1979-80] Imm AR 52, IAT.

11 Immigration Act 1971 s 8(3) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2; and the Immigration Act 1988 s 4). As to the like immunity from jurisdiction see the International Organisations Act 1968, the Consular Relations Act 1968, the Diplomatic and other Privileges Act 1971; and INTERNATIONAL RELATIONS LAW. The exemption conferred by the Immigration Act 1971 s 8(3) (as amended) is applied by the State Immunity Act 1978 s 20(3): see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 263.

12 le as defined by the Diplomatic Privileges Act 1964: see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 273.

13 Immigration Act 1971 s 8(3A) (added by the Immigration Act 1988; and substituted by the Immigration and Asylum Act 1999 s 6).

14 Immigration Act 1971 s 8(2). The following persons have been exempted from any provision of the Immigration Act 1971: (1) any consular officer in the service of any of the states specified in the Immigration (Exemption From Control) Order 1972, SI 1972/1613, Schedule (as amended) (see para 88 ante) (being states with which consular conventions have been concluded by Her Majesty); (2) any consular employee in such service as is mentioned in head (1) supra; and (3) any member of the family of a person exempted under head (1) or head (2) supra forming part of his household: art 3 (amended by SI 1982/1649). 'Consular employee' and 'consular officer' have the meanings respectively assigned to them by the Vienna Convention on Consular Relations (Vienna, 24 April 1963; TS 14 (1973); Cmnd 5219) art 1 (see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARAS 292, 295); Immigration (Exemption From Control) Order 1972, SI 1972/1613, art 1(1). See generally in relation to such orders para 88 ante. As to proof of an order see para 86 note 15 ante.

15 See the Immigration Act 1971 ss 3(8), 7(5) (s 3(8) amended by the British Nationality Act 1981 Sch 4 paras 2, 4).

16 See para 225 et seq post.

UPDATE

160-166 Deportation

For provision relating to the deportation of criminals see PARA 160A.

162 Exemptions from deportation

TEXT AND NOTE 6--Now head (1) he is not liable to deportation under the 1971 Act s 3(5) (see PARA 160) if at the time of the Secretary of State's decision he had for the last five years been ordinarily resident in the United Kingdom and Islands: s 7(1)(b) (substituted by the Nationality, Immigration and Asylum Act 2002 s 75(1), (3)).

NOTE 6--1971 Act s 7(1)(a) repealed: Nationality, Immigration and Asylum Act 2002 s 75(1), (2).

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/3. Immigration/(2) Powers and Duties of the Secretary of State, Immigration Officers etc/(v) Deportation/163. Removal of persons liable to deportation.

163. Removal of persons liable to deportation.

Where a deportation order is in force against any person¹, the Secretary of State² may give directions for his removal to a country or territory specified in the directions which is either: (1) a country of which he is a national or citizen; or (2) a country or territory to which there is reason to believe that he will be admitted³. Directions may be given: (a) to the captain⁴ of a ship⁵ or aircraft⁶ about to leave the United Kingdom requiring him to remove the person in question in that ship or aircraft; or (b) to the owners or agents of any ship or aircraft requiring them to make arrangements for his removal in a ship or aircraft specified or indicated in the

directions; or (c) for his removal in accordance with arrangements to be made by the Secretary of State⁷. If the person arrived through the tunnel system⁸, directions may be given to the person operating the international service⁹ by which the person arrived requiring the operator to make arrangements for the person's removal through the tunnel system¹⁰.

1 As to liability to deportation see para 160 et seq ante.

2 As to the Secretary of State see para 2 ante.

3 Immigration Act 1971 s 5(5), Sch 3 para 1(1). A person against whom a deportation order has been made is normally removed from the United Kingdom to the country of which he is a national, or which has most recently provided him with a travel document, unless he can show that another country will receive him despite his deportation from the United Kingdom. In considering any departure from the normal arrangements, regard will be had to the general public interest and, in particular, to any additional expense which may fall on public funds: Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 385. The person will not be removed as the subject of a deportation order while an appeal may be brought against removal directions or such an appeal is pending: Immigration Rules para 386. As to the scope of such an appeal see *R v Immigration Appeal Tribunal, ex p Muruganandarajah* [1986] Imm AR 382, CA; and para 177 post. As to proof of orders and directions see para 86 note 15 ante. As to administrative removal of overstayers etc see paras 152-154 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

Expenses incurred by the Secretary of State in connection with the removal of any person under the Immigration Act 1971 Sch 2 (as amended), the departure of such a person with his dependants, or his or their maintenance pending departure, are to be defrayed out of money provided by Parliament: s 31(b).

4 For the meaning of 'captain' see para 87 note 1 ante.

5 As to the meaning of 'ship' see para 87 note 2 ante.

6 As to the meaning of 'aircraft' see para 87 note 3 ante.

7 Immigration Act 1971 Sch 3 para 1(2). The Secretary of State may, if he thinks fit, use money belonging to a deportee to pay for some or all of his and his dependants' maintenance until departure and for the expenses of or incidental to the journey from the United Kingdom; but otherwise they must be paid by the Secretary of State: see Sch 3 para 1(4). A deportee may be placed on board any ship or aircraft in which he is to be removed under the authority of the Secretary of State: Sch 3 para 1(3), applying s 4(2), Sch 2 para 11 (see para 152 ante). The captain, if so required by the Secretary of State, must prevent from disembarking in the United Kingdom or before the directions for his removal have been fulfilled any person placed on board a ship or aircraft, and the captain may for that purpose detain such a person in custody on the ship or aircraft: Sch 3 para 1(3), applying Sch 2 para 16(4) (see para 156 ante).

8 For the meaning of 'tunnel system' see para 196 note 3 post.

9 For the meaning of 'international service' see para 87 note 1 ante.

10 Immigration Act 1971 Sch 3 para 1 (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 12; and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7).

UPDATE

160-166 Deportation

For provision relating to the deportation of criminals see PARA 160A.

163 Removal of persons liable to deportation

NOTE 10--SI 2004/1405 art 7 amended: SI 2007/3579.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(v) Deportation/164. Deportation and asylum.

164. Deportation and asylum.

A deportation order will not be made against any person if his removal in pursuance of the order would be contrary to the United Kingdom's¹ obligations under the Convention and Protocol relating to the Status of Refugees² and nothing in the Immigration Rules is to be construed as requiring action contrary to the United Kingdom's obligations under those instruments³. Consequently, in accordance with those instruments, a deportation order cannot be made against a person if the only country to which he can be removed is one to which he is unwilling to go owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. However, a contracting state may expel or return a refugee in certain situations on the grounds of national security or public order⁴.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 380. The reference in the text to the Convention and Protocol relating to the Status of Refugees is a reference to the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906). As to asylum generally see para 238 et seq post.

3 Asylum and Immigration Appeals Act 1993 s 2.

4 See the Refugee Convention arts 32-33. Where a refugee has lost the benefit of art 33(1) because of conduct which makes him a danger to the community, his status as a refugee does not in itself militate against making a deportation order: *Raziastaraie v Secretary of State for the Home Department* [1995] Imm AR 459, CA. See further para 238 post.

UPDATE

160-166 Deportation

For provision relating to the deportation of criminals see PARA 160A.

164 Deportation and asylum

NOTE 4--See further Immigration, Asylum and Nationality Act 2006 s 55 and para 239.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(v) Deportation/165. Deportation procedures.

165. Deportation procedures.

When a decision to make a deportation order¹ has been made (otherwise than on the recommendation of a court) a notice is given to the deportee informing him of the decision and of his right to appeal² to the Immigration Appellate Authority or, in a case which involves the interests of national security or the relations between the United Kingdom and any other country or other reasons of a political nature, to the Special Immigration Appeals Commission³.

Following the issue of such a notice the Secretary of State may authorise detention or make an order restricting a person as to residence, employment or occupation and requiring him to report to the police, pending the making of a deportation order⁴. If an appeal is lodged within the prescribed time limit, a summary of the facts of the case on the basis of which the decision was taken is sent to the appropriate appellate authorities, who notify the appellant of the arrangements for the appeal to be heard⁵. If the appeal is dismissed or no appeal is lodged, a deportation order is submitted to the Secretary of State for his signature⁶.

The Secretary of State may delegate decisions on deportation to immigration inspectors of sufficient seniority and experience⁷.

1 As to liability to deportation see para 160 et seq ante.

2 The notice must comply with the Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246 (as amended): see para 187 post. Service of a deportation notice may also constitute notification of a refusal of an out of time application for leave to remain: *Singh v Secretary of State for the Home Department* [1990] Imm AR 124, CA (refusal of an application by a person originally admitted as a visitor for leave to remain on the basis of a second marriage to a British citizen). If a deportation order is made but not brought to the attention of the deportee before he has spent 14 years in the United Kingdom, he may be able to rely on the 14-year concession, under which the Secretary of State grants leave to remain on the basis of the time spent in the United Kingdom: *R v Secretary of State for the Home Department, ex p Popatia* [2000] INLR 587. See further para 169 post. As to the Secretary of State see para 2 ante.

3 See the Immigration and Asylum Act 1999 s 64(1); the Special Immigration Appeals Commission Act 1997 s 2(1), (1B) (s 2(1) substituted, and s 2(1A)-(1C) added by the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 32(1)); and Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 381 (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 60). As to appeals see para 173 et seq post.

4 See the Immigration Act 1971 Sch 3 para 2(2), (5) (as added and amended); the Immigration Rules para 382 (substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 61); and para 166 post. Where a person is detained pending an appeal he may apply to an adjudicator for release on bail: see the Immigration Act 1971 Sch 3 para 3; and para 166 post.

5 Immigration Rules para 384 (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 63).

6 Normally, the order is signed by the Home Office Immigration Minister, but contentious cases are referred to the Secretary of State: *Immigration Directorates' Instructions* Chapter 13 (Deportation) Section 1 paragraph 5 (September 2001).

As to appeals generally see paras 173-195 post.

7 *R v Secretary of State for the Home Department, ex p Oladehinde* [1991] 1 AC 254, [1990] 3 All ER 393, [1991] Imm AR 111, HL. The notice of intention to deport (and of detention pending deportation: see para 166 post) does not have to be completed by the Secretary of State in person but may be delegated: *Re Amanullah Khan* [1986] Imm AR 485 (completion by a police officer); *R v Secretary of State for the Home Department, ex p Oladehinde* supra.

UPDATE

160-166 Deportation

For provision relating to the deportation of criminals see PARA 160A.

165 Deportation procedures

NOTE 3--1997 Act s 2 substituted: Nationality, Immigration and Asylum Act 2002 Sch 7 para 20 (amended by Immigration, Asylum and Nationality Act 2006 Sch 1 para 14).

NOTE 4--1971 Act Sch 3 para 2(2) amended: 2002 Act Sch 7 para 7; Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 34(1). 1971 Act Sch 3 para 3 substituted: 2002 Act Sch 7 para 8.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(v) Deportation/165A. Co-operation.

165A. Co-operation.

The Secretary of State¹ may require a person to take specified action if the Secretary of State thinks that the action will or may enable a travel document² to be obtained by or for the person and possession of the travel document will facilitate the person's deportation or removal from the United Kingdom³. In particular, the Secretary of State may require a person to (1) provide information or documents to the Secretary of State or to any other person; (2) obtain information or documents; (3) provide fingerprints, submit to the taking of a photograph or provide information, or submit to a process for the recording of information, about external physical characteristics (including, in particular, features of the iris or any other part of the eye); (4) make, or consent to or co-operate with the making of, an application to a person acting for the government of a state other than the United Kingdom; (5) co-operate with a process designed to enable determination of an application; (6) complete a form accurately and completely; (7) attend an interview and answer questions accurately and completely; or (8) make an appointment⁴.

A person commits an offence if he fails without reasonable excuse to comply with such a requirement⁵. A person guilty of such an offence is liable (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both; or (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum⁶ or to both⁷. If an immigration officer⁸ reasonably suspects that a person has committed such an offence he may arrest the person without warrant⁹.

1 As to the Secretary of State see PARA 2.

2 'Travel document' means a passport or other document which is issued by or for Her Majesty's government or the government of another state and which enables or facilitates travel from the United Kingdom to another state: Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 35(7).

3 Ibid s 35(1). 'Removal from the United Kingdom' means removal under (1) the Immigration Act 1971 Sch 2, including a provision of Sch 2 as applied by another provision of the Immigration Acts; (2) the Immigration and Asylum Act 1999 s 10; or (3) the 2004 Act Sch 3: s 35(7). For the meaning of 'the Immigration Acts' see PARA 83 TEXT AND NOTE 13.

4 Ibid s 35(2).

5 I.e a requirement under *ibid* s 35(1): s 35(3). An offence under s 35(3) is to be treated as (1) a relevant offence for the purposes of the 1971 Act ss 28B, 28D; and (2) an offence under Pt III (ss 24-28L) for the purposes of ss 28(4), 28E, 28G, 28H: 2004 Act s 35(6). Fear of being persecuted on return to one's country of origin does not amount to a reasonable excuse: *R v Tabnak* [2007] EWCA Crim 380, [2007] 1 WLR 1317.

6 As to the statutory maximum see PARA 158 NOTE 20.

7 2004 Act s 35(4).

8 'Immigration officer' means a person appointed by the Secretary of State as an immigration officer under the Immigration Act 1971 Sch 2 para 1 (see PARA 140): 2004 Act s 45.

9 Ibid s 35(5) (amended by the Serious Organised Crime and Police Act 2005 Sch 7 para 63).

UPDATE**160-166 Deportation**

For provision relating to the deportation of criminals see PARA 160A.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(v) Deportation/166. Detention and control pending deportation.

166. Detention and control pending deportation.

Where a recommendation for deportation made by a court is in force in respect of a person who is neither detained in pursuance of the sentence or order of any court nor released on bail by any court having power so to release him, he must be detained pending the making of a deportation order unless: (1) the court by which the recommendation was made otherwise directs; or (2) the Secretary of State¹ directs his release pending further consideration of his case; or (3) where he appeals against his conviction or against the recommendation, the court determining the appeal directs him to be released without setting aside the recommendation².

A person who has been notified of a decision to make a deportation order against him³ (where he is neither detained in pursuance of the sentence or order of a court nor released on bail by a court) may be detained under the authority of the Secretary of State pending the making of the deportation order⁴.

Where a deportation order is in force, the deportee may be detained under the authority of the Secretary of State pending his removal or departure from the United Kingdom⁵.

Any person who is liable to be detained under the provisions described above⁶, but who is not so detained, is subject to such restrictions as to residence, as to employment or occupation, and as to reporting to the police or an immigration officer, as may from time to time be notified to him in writing by the Secretary of State⁷.

Where the release of a person recommended for deportation is directed by a court, he is subject to such restrictions as to residence, as to his employment or occupation, and as to reporting to the police, as the court may direct⁸. On an application made by or on behalf of a person recommended for deportation whose release was so directed, or by a constable or an immigration officer, the appropriate court (which generally is the court which directed the release⁹) has the following powers¹⁰: (a) if the applicant is not subject to any such restrictions imposed by a court¹¹, to order that he is to be subject to any such restrictions as the court may direct; and (b) if he is subject to such restrictions, to direct that any of them be varied or cease to have effect, or to give further directions as to his residence and reporting¹².

A power of arrest without warrant is conferred on constables and immigration officers if they have reasonable grounds for suspicion that there has been, is or is likely to be contravention of such restrictions¹³. An arrested person must be brought as soon as practicable and in any event within 24 hours after his arrest before a justice of the peace for the petty sessions area or district in which he was arrested¹⁴. Any such justice of the peace, if of the opinion that the person is contravening, has contravened or is likely to contravene any such restrictions, may direct either that he be detained or that he be released subject to such restrictions as to his residence and reporting to the police as the court may direct, and, if not of that opinion, must release him without altering the restrictions as to his residence and his reporting to the police¹⁵.

The provisions of the Immigration Act 1971 relating to deportation also apply to a person who is subject to a deportation order made under the immigration laws of the Channel Islands or the Isle of Man¹⁶, and who is not: (i) a British citizen; (ii) an EEA national; (iii) a member of the family of an EEA national; or (iv) a member of the family of a British citizen, who is neither a British citizen or nor an EEA national¹⁷. In any particular case the Secretary of State may direct that such a deportation order is to have the effect of a deportation order made in the United Kingdom, even though the deportee is an EEA national, a member of the family of an EEA national or a member of the family of a British citizen who is not himself a British citizen or an EEA national¹⁸. The Secretary of State has no power to revoke such a deportation order¹⁹. It is not unlawful for a person in respect of whom such a deportation order is in force in any of the Channel Islands or the Isle of Man to enter the United Kingdom on his way from that island to a place outside the United Kingdom²⁰.

A suspected international terrorist²¹ may be detained²² despite the fact that his removal or departure from the United Kingdom is prevented (whether temporarily or indefinitely) by a point of law which wholly or partly relates to an international agreement, or a practical consideration²³.

1 As to the Secretary of State see para 2 ante.

2 Immigration Act 1971 s 5(5), Sch 3 para 2(1), (1A) (Sch 3 para 2(1) amended, and Sch 3 para 2(1A) added, by the Criminal Justice Act 1982 s 64, Sch 10 para 1). As from a day to be appointed, the Immigration Act 1971 Sch 3 para 2(1) (as amended) is further amended by the Immigration and Asylum Act 1999 s 54 so as to provide that where a recommendation for deportation made by a court is in force in respect of a person who is neither detained in pursuance of the sentence or order of any court nor released on bail by any court having power so to release him, he is to be detained pending the making of a deportation order unless: (1) the court by which the recommendation was made otherwise directs; (2) the Secretary of State directs his release pending further consideration of his case; (3) he is released on bail; or (4) where he appeals against his conviction or against the recommendation, the court determining the appeal directs him to be released without setting aside the recommendation. At the date at which this volume states the law no such day had been appointed.

These provisions give the courts power at each stage to release the offender notwithstanding that a recommendation for deportation is in force: *R v Ofori*, *R v Tackie* (1993) 99 Cr App Rep 219, CA. Release by the Secretary of State is by the grant of temporary admission: see para 212 post. As to the grant of bail see paras 213-218 post.

The Immigration Act 1971 Sch 2 Pt II (paras 29-34) (as amended) (effect of appeals) so far as it relates to appeals under the Immigration and Asylum Act 1999 s 66 (validity of directions for removal) (see para 177 post) or s 67 (removal on objection to destination) (see para 178 post) applies for the purposes of the Immigration Act 1971 Sch 3 as if the references in Sch 2 para 29(1) (as amended) to Pt I (ss 1-27C) (as amended) were references to Sch 3 (as amended); and the provisions of Sch 2 paras 29-33 (as amended) (grant of bail pending appeal; restrictions on grant of bail; arrest of appellants released on bail) apply in like manner in relation to appeals under the Immigration and Asylum Act 1999 s 63(1)(a) (appeal against decision of Secretary of State to make deportation order) (see para 160 post) or s 69(4)(a) (appeal against decision of Secretary of State to make deportation order) (see para 180 post): Immigration Act 1971 Sch 3 para 3. As to appeals see para 176 post.

3 Such notification must comply with the Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246 (as amended): see para 187 post. As long as the decision to make the order is made in good faith, any subsequent detention is lawful, even if the deportation notice is later withdrawn or set aside: *Ullah v Secretary of State for the Home Department* [1995] Imm AR 166, CA.

4 Immigration Act 1971 Sch 3 para 2(2). See also para 165 ante.

5 Ibid Sch 3 para 2(3). As to the meaning of 'United Kingdom' see para 5 note 1 ante. If the deportee is already detained (pursuant to Sch 3 para 2(1) (as amended), Sch 3 para 2(1A) (as added), or Sch 3 para 2(2)) when the deportation order is made, he may continue to be detained unless the Secretary of State directs otherwise: Sch 3 para 2(3). As from a day to be appointed, Sch 3 para 2(3) is amended by the Immigration and Asylum Act 1999 s 54 so as to provide that if the deportee is already detained (pursuant to Sch 3 para 2(1) (as amended), Sch 3 para 2(1A) (as added), or Sch 3 para 2(2)) when the deportation order is made, he may continue to be detained unless he is released on bail or the Secretary of State directs otherwise. At the date at which this volume states the law no such day had been appointed.

The appellate authority has no jurisdiction to grant bail where a deportation order has been signed, but the High Court and the Court of Appeal have inherent jurisdiction to grant bail ancillary to any proceedings before the

court. See *R (on the application of Sezek) v Secretary of State for the Home Department* [2001] EWCA Civ 795, [2002] 1 WLR 348, CA (the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5(1)(f) permits detention pending deportation; bail refused).

The deportee may be arrested without warrant by a police constable or an immigration officer who may detain him (and photograph, measure or otherwise identify him), search his person or any premises and seize any relevant documents: Immigration Act 1971 Sch 3 para 2(4), applying Sch 2 paras 17, 18, 25A-25E (as added) (see paras 156 ante, 207-209 post).

6 le under ibid Sch 3 para 2(1)-(3): see the text and notes 1-5 supra.

7 Ibid Sch 3 para 2(5), (6) (Sch 3 para 2(5), (6) added by the Criminal Justice Act 1982 Sch 10 para 2; and the Immigration Act 1971 Sch 3 para 2(5) amended by the Immigration Act 1988 s 10, Schedule; and the Asylum and Immigration Act 1996 s 12(1), Sch 2 para 13). See also para 165 ante.

8 Immigration Act 1971 Sch 3 para 4 (added by the Criminal Justice Act 1982 Sch 10 para 2; and amended by the Immigration Act 1988 Schedule para 10).

9 See the Immigration Act 1971 Sch 3 para 6 (Sch 3 paras 5-10 added by the Criminal Justice Act 1982 Sch 10 para 2).

10 Immigration Act 1971 Sch 3 para 5(1) (as added: see note 9 supra).

11 le as are mentioned in ibid Sch 3 para 4: see the text and note 8 supra.

12 Ibid Sch 3 para 5(2) (as added: see note 9 supra).

13 See ibid Sch 3 para 7(1) (as added: see note 9 supra). Where a court in England or Wales imposed the restrictions, the arrest must take place in England and Wales, and where a court in Northern Ireland imposed the restrictions, the arrest must take place in Northern Ireland: Sch 3 para 7(2) (as so added).

14 Ibid Sch 3 para 8(1) (as added: see note 9 supra). In reckoning for the purposes of Sch 3 para 8 (as added) any period of 24 hours, no account is to be taken of Christmas day, Good Friday or any Sunday: Sch 3 para 8(2) (as so added).

15 Ibid Sch 3 para 10 (as added: see note 9 supra).

16 See para 94 note 15 ante.

17 Immigration Act 1971 s 9(1), Sch 4 para 3(1), (2) (Sch 4 para 3 substituted by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 70). As to British citizens and citizenship see paras 8, 23-43 ante. As to EEA nationals see para 225 et seq post. The provisions of the Immigration and Asylum Act 1999 s 80(1), (12), (14) (provision for appeals by EEA nationals: see para 182 post) apply for these purposes as they apply for the purposes of s 80: Immigration Act 1971 Sch 4 para 3(7) (as so substituted).

18 Ibid Sch 4 para 3(4) (as substituted: see note 17 supra).

19 Ibid Sch 4 para 3(3) (as substituted: see note 17 supra).

20 Ibid Sch 4 para 3(6) (as substituted: see note 17 supra).

21 As to the derogation of the United Kingdom government from the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 5(1) in relation to suspected international terrorists see para 167 post.

22 le under the Immigration Act 1971 Sch 2 para 16 (as amended) (detention of persons liable to examination and removal) (see para 156 ante) and Sch 3 para 2 (as amended) (detention pending deportation) (see the text and notes 1-7 supra).

23 Anti-terrorism, Crime and Security Act 2001 s 23(1), (2). As to the expiry of the provisions of ss 21-23 see para 168 post. The provisions permitting indefinite detention of foreign nationals have been held to be incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 14 because they discriminate against foreign nationals: see *A v Secretary of State for the Home Department* (30 July 2002, unreported) (SC/1-7/2002), SIAC.

UPDATE

160-166 Deportation

For provision relating to the deportation of criminals see PARA 160A.

166 Detention and control pending deportation

NOTE 1--Reference to person being released on bail by a court omitted: 1971 Act Sch 3 para 2(1) (amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 34(1)).

NOTE 2--Day now appointed: SI 2003/2.

Now, the 1971 Act Sch 2 paras 29-33, so far as they relate to an appeal under the Nationality, Immigration and Asylum Act 2002 s 82(1) against a decision of the kind referred to in s 82(2)(j) or (k) (decision to make deportation order and refusal to revoke deportation order), apply for the purposes of the 1971 Act Sch 3 as if the reference in Sch 2 para 29(1) to Sch 2 Pt I (paras 1-27C) was a reference to Sch 3 (as amended): Sch 3 para 3 (substituted by the 2002 Act Sch 7 para 8).

NOTES 4, 5--There is no general rule of law that policy must be published, or, if it is not, that it can be categorised as unlawful for that reason alone: *R (on the application of WL) v Secretary of State for the Home Department*; *R (on the application of KM) v Secretary of State for the Home Department* [2010] EWCA Civ 111, [2010] All ER (D) 221 (Feb) (not unlawful for department to have unpublished, internal policy to guide officials as to exercise of ministerial discretion in detention of foreign nationals following completion of their prison sentence).

NOTE 4--The notification must now comply with regulations under the 2002 Act s 105: 1971 Act Sch 3 para 2(2) (amended by the 2002 Act Sch 7 para 7). Reference to person being released on bail by a court omitted: 1971 Act Sch 3 para 2(2) (amended by the 2004 Act s 34(2)).

NOTE 5--1971 Act Sch 3 para 2(4) amended: Immigration, Asylum and Nationality Act 2006 s 53. The detention pending deportation of a failed asylum seeker at the end of a prison sentence is not unlawful if his release would constitute a threat to public safety or there is a risk that he would abscond: *R (on the application of A) v Secretary of State for the Home Department* [2007] EWCA Civ 804, [2007] All ER (D) 467 (Jul). See also *R (on the application of Walumba Lumba) v Secretary of State for the Home Department* [2008] EWHC 2090 (Admin), [2008] All ER (D) 07 (Oct) (refusal to voluntarily return did not justify detention ad infinitum). See also *R (on the application of Anam) v Secretary of State for the Home Department* [2009] EWHC 2496 (Admin), [2009] All ER (D) 127 (Oct) (detention of mentally ill person pending deportation not unlawful in light of escalating seriousness of his pattern of offending and high risk of him absconding).

NOTES 7, 8--As to provision for the use of electronic monitoring in relation to the restrictions see PARA 166A.

NOTES 7, 12--The Secretary of State may make a payment to a person in respect of travelling expenses which the person has incurred, or will incur, for the purpose of complying with a reporting restriction which requires a person to report to the police, an immigration officer or the Secretary of State under the 1971 Act Sch 3 paras 2, 5: Nationality, Immigration and Asylum Act 2002 s 69(1), (2), (3)(c).

NOTE 9--1971 Act Sch 3 para 6 amended: Courts Act 2003 Sch 8 para 150(2), (3), Sch 10.

TEXT AND NOTE 14--For 'for the petty sessions area ... arrested' read 'in England or Wales': 1971 Act Sch 3 para 8 (amended by the 2003 Act Sch 8 para 150(4), Sch 10).

TEXT AND NOTES 21-23--2001 Act s 23 repealed: Prevention of Terrorism Act 2005 s 16(2) (a).

NOTE 23--*A v Secretary of State for the Home Department*, cited, reversed sub nom *A v Secretary of State for the Home Department; X v Secretary of State for the Home Department* [2004] UKHL 56, [2005] 2 AC 68.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(v) Deportation/166A. Electronic monitoring.

166A. Electronic monitoring.

Where a residence restriction¹ is imposed on an adult², he may be required to co-operate with electronic monitoring³. Where a reporting restriction⁴ could be imposed on an adult, he may instead be required to co-operate with electronic monitoring⁵. Immigration bail⁶ may be granted to an adult subject to a requirement that he co-operate with electronic monitoring; and the requirement may be imposed as a condition of a recognisance or bail bond⁷.

For these purposes, requiring an adult to co-operate with electronic monitoring means requiring him to co-operate with such arrangements as the person imposing the requirement may specify for detecting and recording by electronic means the location of the adult, or his presence in or absence from a location (1) at specified times; (2) during specified periods of time; or (3) throughout the currency of the arrangements⁸. In particular, arrangements for the electronic monitoring of an adult (a) may require him to wear a device; (b) may require him to make specified use of a device; (c) may prohibit him from causing or permitting damage of or interference with a device; (d) may prohibit him from taking or permitting action that would or might prevent the effective operation of a device; (e) may require him to communicate in a specified manner and at specified times or during specified periods of time; and (f) may involve the performance of functions by persons other than the person imposing the requirement to co-operate with electronic monitoring (and those functions may relate to any aspect or condition of a residence restriction, of a reporting restriction, of an employment restriction, of a requirement under the above provisions or of immigration bail)⁹.

The Secretary of State¹⁰ (i) may make rules about arrangements for electronic monitoring for these purposes¹¹; and (ii) when he thinks that satisfactory arrangements for electronic monitoring are available in respect of an area, must notify persons likely to be in a position to exercise power¹² in respect of the area¹³. Rules under head (i) above may, in particular, require that arrangements for electronic monitoring impose on a person of a specified description responsibility for specified aspects of the operation of the arrangements¹⁴. A requirement to co-operate with electronic monitoring (A) must comply with rules under head (i); and (B) may not be imposed in respect of an adult who is or is expected to be in an area unless the person imposing the requirement has received a notification from the Secretary of State under head (ii) in respect of that area¹⁵.

1 'Residence restriction' means a restriction as to residence imposed under the Immigration Act 1971 Sch 2 para 21, including Sch 2 para 21 as applied by another provision of the Immigration Acts (see PARA 212), or Sch 3 (see PARA 166): Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 36(1)(a). For the meaning of 'the Immigration Acts' see PARA 83 TEXT AND NOTE 13.

2 'Adult' means an individual who is at least 18 years old: *ibid* s 36(7).

3 *Ibid* s 36(2)(a). Failure to comply with a requirement under s 36(2)(a) is to be treated for all purposes of the Immigration Acts as failure to observe the residence restriction: s 36(2)(b).

4 'Reporting restriction' means a requirement to report to a specified person imposed under the 1971 Act Sch 2 para 21, including Sch 2 para 21 as applied by another provision of the Immigration Acts, or Sch 3: 2004 Act s 36(1)(b).

5 Ibid s 36(3)(a). The requirement is to be treated for all purposes of the Immigration Acts as a reporting restriction: s 36(3)(b).

6 'Immigration bail' means (1) release under a provision of the Immigration Acts on entry into a recognisance or bail bond; (2) bail granted in accordance with a provision of the Immigration Acts by a court, a justice of the peace, the sheriff, the Asylum and Immigration Tribunal, the Secretary of State or an immigration officer (but not by a police officer); and (3) bail granted by the Special Immigration Appeals Commission: 2004 Act s 36(1). For the meaning of 'immigration officer' see PARA 165A NOTE 8.

7 Ibid s 36(4).

8 Ibid s 36(5).

9 Ibid s 36(6).

10 As to the Secretary of State see PARA 2.

11 2004 Act s 36(8)(a). Rules under s 36(8)(a) (1) may include incidental, consequential or transitional provision; (2) may make provision generally or only in relation to specified cases, circumstances or areas; (3) must be made by statutory instrument; and (4) are subject to annulment in pursuance of a resolution of either House of Parliament: s 36(11).

12 Ie under ibid s 36.

13 Ibid s 36(8)(b).

14 Ibid s 36(9).

15 Ibid s 36(10).

UPDATE

160-166 Deportation

For provision relating to the deportation of criminals see PARA 160A.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(vi) Suspected International Terrorists/167. Certification and detention of suspected international terrorists.

(vi) Suspected International Terrorists

167. Certification and detention of suspected international terrorists.

The Secretary of State¹ may issue a certificate in respect of a person (a 'suspected international terrorist')² if he reasonably believes that the person's presence in the United Kingdom³ is a risk to national security and suspects that the person is a terrorist⁴. The Secretary of State may also revoke such a certificate⁵. Where the Secretary of State issues a certificate he must as soon as is reasonably practicable take reasonable steps to notify the person certified and send a copy of the certificate to the Special Immigration Appeals Commission⁶.

A decision of the Secretary of State in connection with certification may be questioned in legal proceedings but only by an appeal to or on a review by the Special Immigration Appeals Commission⁷. An action of the Secretary of State taken wholly or partly in reliance on a

certificate may be questioned in legal proceedings but only by or in the course of proceedings on an appeal to or a review by the Special Immigration Appeals Commission⁸.

The United Kingdom government has taken measures to derogate from the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)⁹ to enable the extended detention of persons who are the subject of a certificate by the Secretary of State¹⁰.

1 As to the Secretary of State see para 2 ante.

2 Anti-terrorism, Crime and Security Act 2001 s 21(5). As to the expiry of the provisions of ss 21-23 see para 168 post.

3 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

4 Anti-terrorism, Crime and Security Act 2001 s 21(1). For these purposes, a 'terrorist' is a person who: (1) is or has been concerned in the commission, preparation or instigation of acts of international terrorism; (2) is a member of or belongs to an international terrorist group; or (3) has links with an international terrorist group: s 21(2). A group is an 'international terrorist group' for these purposes if it is subject to the control or influence of persons outside the United Kingdom, and the Secretary of State suspects that it is concerned in the commission, preparation or instigation of acts of international terrorism: s 21(3). 'Terrorism' has the meaning given by the Terrorism Act 2000 s 1 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 383); Anti-terrorism, Crime and Security Act 2001 s 21(5). A person has links with an international terrorist group only if he supports or assists it: s 21(4).

5 Ibid s 21(7).

6 Ibid s 21(6). As to the Special Immigration Appeals Commission see para 184 post.

7 Ibid s 21(8). The reference in the text to an appeal to the Special Immigration Appeals Commission is a reference to an appeal under s 25: see para 184 post. The reference in the text to a review by the Special Immigration Appeals Commission is a reference to a review under s 26: see para 184 post.

8 Ibid s 21(9). The reference in the text to proceedings on an appeal to or a review by the Special Immigration Appeals Commission is a reference to legal proceedings under s 25 or s 26 (see para 184 post) or under the Special Immigration Appeals Commission Act 1997 s 2 (as amended) (see para 184 post).

9 The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5(1) (which provides that no-one is to be deprived of his liberty save in the cases set out in art 5 and in accordance with a procedure prescribed by law): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 127 et seq.

10 See the Human Rights Act 1998 (Designated Derogation) Order 2001, SI 2001/3644 made under the Human Rights Act 1998 s 14(1), (6) (s 14(1) as amended). As to the effect of this derogation see the Anti-terrorism, Crime and Security Act 2001 ss 22, 23; and paras 160, 166 ante. As to derogation from state obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 168. A derogation matter may be questioned in legal proceedings only before the Special Immigration Appeals Commission: see the Anti-terrorism, Crime and Security Act 2001 s 30(2)-(6); and para 184 post. 'Derogation matter' means: (1) a derogation by the United Kingdom from the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 5(1) (see note 9 supra) which relates to the detention of a person where there is an intention to remove or deport him from the United Kingdom; or (2) the designation under the Human Rights Act 1998 s 14(1) (as amended) of a derogation within head (1) supra: Anti-terrorism, Crime and Security Act 2001 s 30(1).

The provisions of the Anti-terrorism, Crime and Security Act 2001 permitting indefinite detention of foreign nationals have been held to be incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 14 (non-discrimination in the enjoyment of rights): see *A v Secretary of State for the Home Department* (30 July 2002, unreported) (SC/1-7/2002), SIAC.

UPDATE

167 Certification and detention of suspected international terrorists

TEXT AND NOTES--2001 Act ss 21-32 repealed: Prevention of Terrorism Act 2005 s 16(2) (a).

NOTE 4--There is a duty on the Special Immigrations Appeals Commission to initiate an inquiry into whether there is a real risk that evidence might have been obtained by torture if it knows or suspects that the evidence might have come from a country which is widely known or believed to practise torture: *A v Secretary of State for the Home Department* [2005] UKHL 71, [2006] 2 AC 221.

NOTE 10--*A v Secretary of State for the Home Department*, cited, reversed, reported as *A v Secretary of State for the Home Department; X v Secretary of State for the Home Department* [2004] UKHL 56, [2005] 2 AC 68.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(2) POWERS AND DUTIES OF THE SECRETARY OF STATE, IMMIGRATION OFFICERS ETC/(vi) Suspected International Terrorists/168. Review of provisions relating to suspected international terrorists.

168. Review of provisions relating to suspected international terrorists.

The provisions relating to the certification, deportation and detention of suspected international terrorists¹ expire at the end of the period of 15 months beginning with the day on which the Anti-terrorism, Crime and Security Act 2001 was passed², unless the Secretary of State³ by order repeals the relevant provisions⁴ or revives them for a period not exceeding one year⁵ or provides that they are not to expire⁶ but are to continue in force for a period not exceeding one year⁷. Such an order must be made by statutory instrument, and may not be made unless a draft has been laid before and approved by resolution of each House of Parliament⁸. An order may be made without compliance with the requirement for a draft to be laid before and approved by resolution of each House of Parliament if it contains a declaration by the Secretary of State that by reason of urgency it is necessary to make the order without laying a draft before Parliament⁹. In such a case the order must be laid before Parliament and ceases to have effect at the end of the specified period¹⁰ unless the order is approved during that period by resolution of each House of Parliament¹¹. The fact that an order ceases to have effect unless it is so approved does not affect the lawfulness of anything done before the order ceases to have effect, and does not prevent the making of a new order¹².

The Secretary of State must appoint a person to review the operation of the provisions relating to the certification, deportation and detention of suspected international terrorists¹³. The person appointed must review the operation of those provisions not later than: (1) the expiry of 14 months beginning with the day on which the Anti-terrorism, Crime and Security Act 2001 is passed¹⁴; (2) one month before the expiry of a specified period¹⁵. Where that person conducts a review he must send a report to the Secretary of State as soon as is reasonably practicable¹⁶ and where the Secretary of State receives such a report he must lay a copy before Parliament as soon as is reasonably practicable¹⁷.

1 The provisions of the Anti-terrorism, Crime and Security Act 2001 s 21 (certification) (see para 167 ante), s 22 (deportation) (see para 160 ante), s 23 (detention) (see para 166 ante).

As to the derogation of the United Kingdom government from the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5(1) in relation to suspected international terrorists see para 167 ante.

2 Anti-terrorism, Crime and Security Act 2001 s 29(1). The Anti-terrorism, Crime and Security Act 2001 was passed on 14 December 2001. Therefore, subject to s 29(2)-(7), the provisions of ss 21-23 expire on 14 March 2003. Section 29(7) provides that ss 21-23 cease to have effect at the end of 10 November 2006.

3 As to the Secretary of State see para 2 ante.

- 4 Anti-terrorism, Crime and Security Act 2001 s 29(2)(a).
- 5 Ibid s 29(2)(b).
- 6 le in accordance with ibid s 29(1) (see the text and note 2 supra) or an order under s 29(2)(b) (see the text and note 5 supra) or s 29(2)(c) (see the text and note 7 infra).
- 7 Ibid s 29(2)(c).
- 8 Ibid s 29(3).
- 9 Ibid s 29(4).
- 10 The specified period is the period of 40 days beginning with the day on which the order is made, and ignoring any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: ibid s 29(5).
- 11 Ibid s 29(4).
- 12 Ibid s 29(6).
- 13 Ibid s 28(1). The Secretary of State may make payments to the person so appointed: s 28(5).
- 14 As to the day on which the Anti-terrorism, Crime and Security Act 2001 was passed: see note 2 supra.
- 15 Ibid s 28(2). The reference in the text to a specified period is to one specified in accordance with s 29(2)(b) (see the text and note 5 supra) or s 29(2)(c) (see the text and note 7 supra).
- 16 Ibid s 28(3).
- 17 Ibid s 28(4).

UPDATE

168 Review of provisions relating to suspected international terrorists

TEXT AND NOTES--2001 Act ss 21-32 repealed: Prevention of Terrorism Act 2005 s 16(2)(a).

TEXT AND NOTE 2--The provisions continue in force until 13 March 2005: SI 2003/691, SI 2004/751.

NOTE 2--For '14 March' read '13 March'. See TEXT AND NOTE 2.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(3) IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS/169. The Immigration Services Commissioner.

(3) IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS

169. The Immigration Services Commissioner.

The Immigration Services Commissioner¹ is appointed by the Secretary of State² after consulting the Lord Chancellor³. It is the Commissioner's duty to promote good practice by those who provide immigration advice⁴ or immigration services⁵.

The Commissioner must exercise his functions⁶ so as to secure, so far as is reasonably practicable, that those who provide immigration advice or immigration services: (1) are fit and competent to do so; (2) act in the best interests of their clients; (3) do not knowingly mislead

any court, tribunal or adjudicator in the United Kingdom; (4) do not seek to abuse any procedure operating in the United Kingdom in connection with immigration or asylum (including any appellate or other judicial procedure); and (5) do not advise any person to do something which would amount to such an abuse⁷. The Commissioner must arrange for the publication, in such form and manner and to such extent as he considers appropriate, of information about his functions and about matters falling within the scope of his functions, and may give advice about his functions and about such matters⁸.

1 Immigration and Asylum Act 1999 ss 82(1), 83(1).

2 As to the Secretary of State see para 2 ante.

3 Immigration and Asylum Act 1999 s 83(2). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. The Secretary of State must also consult the Scottish minister: s 83(2). The Commissioner is a corporation sole; and he and the members of his staff are not to be regarded as the servants or agents of the Crown or as having any status, privilege or immunity of the Crown: s 83(7), Sch 5 para 11. The Commissioner holds office for a term of five years but may resign at any time by notice in writing given to the Secretary of State: Sch 5 para 12(1). The Secretary of State may dismiss the Commissioner: (1) on the ground of incapacity or misconduct; or (2) if he is satisfied: (a) that he has been convicted of a criminal offence; or (b) that a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors: Sch 5 para 12(2). The Commissioner is eligible for re-appointment when his term of office ends: Sch 5 para 12(3). Subject to the provisions of Sch 5, the Commissioner holds office on such terms and conditions as the Secretary of State may determine: Sch 5 para 13. There is to be paid to the Commissioner such remuneration and expenses as the Secretary of State may determine and the Secretary of State may pay, or provide for the payment of, such pensions, allowances or gratuities to or in respect of the Commissioner as he may determine: Sch 5 para 14. In certain circumstances, the Secretary of State may make a payment of compensation if a person ceases to be the Commissioner, otherwise than when his term of office ends: Sch 5 para 15. The Secretary of State must appoint a person to act as Deputy Commissioner to act during any vacancy in the office of Commissioner, or at any time when the Commissioner is unable to discharge his functions: Sch 5 para 16. The Commissioner may appoint staff, subject to obtaining the approval of the Secretary of State as to numbers and remuneration: Sch 5 para 17. The Secretary of State may pay to the Commissioner any expenses incurred or to be incurred by the Commissioner in respect of his staff and, with the approval of the Treasury, such other sums for enabling the Commissioner to perform his functions as the Secretary of State thinks fit: Sch 5 para 18. Subject to any general or specific directions given to him by the Secretary of State with the approval of the Treasury, sums received by the Commissioner in the exercise of his functions must be paid to the Secretary of State who must pay them into the Consolidated Fund: Sch 5 para 19. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 512 et seq. The Commissioner must keep proper accounts and prepare a statement for each financial year to be examined by the Comptroller and Auditor General and laid before each House of Parliament: Sch 5 para 20. As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 724. The Commissioner must make an annual report to the Secretary of State on the performance of his functions in that year and the Secretary of State must lay a copy of the report before each House of Parliament: Sch 5 para 21. A document purporting to be an instrument issued by the Commissioner and to be signed by or on behalf of the Commissioner is to be received in evidence and treated as such an instrument unless the contrary is shown: Sch 5 para 22. The Commissioner and the Deputy Commissioner are disqualified for membership of the House of Commons and the Northern Ireland Assembly: Sch 5 paras 23, 24.

4 'Immigration advice' means advice which: (1) relates to a particular individual; (2) is given in connection with one or more relevant matters; (3) is given by a person who knows that he is giving it in relation to a particular individual and in connection with one or more relevant matters; and (4) is not given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings: *ibid* s 82(1). 'Relevant matters' means: (a) a claim for asylum; (b) an application for, or for the variation of, entry clearance or leave to enter or remain in the United Kingdom; (c) unlawful entry into the United Kingdom; (d) nationality and citizenship under the law of the United Kingdom; (e) citizenship of the European Union; (f) admission to member states under Community law; (g) residence in a member state in accordance with rights conferred by or under Community law; (h) removal or deportation from the United Kingdom; (i) an application for bail under the Immigration Acts or under the Special Immigration Appeals Commission Act 1997; or (j) an appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to in heads (a)-(i) *supra*: s 82(1). 'Claim for asylum' means a claim that it would be contrary to the United Kingdom's obligations under the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906), or the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), art 3 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue)

para 122 et seq) for the claimant to be removed from, or required to leave, the United Kingdom: Immigration and Asylum Act 1999 s 82(1). As to claims for asylum see para 238 et seq post. As to the meaning of 'United Kingdom' see para 5 note 1 ante. For the meaning of 'the Immigration Acts' see para 83 ante.

As from a day to be appointed, the Secretary of State may with the approval of the Treasury make grants to any voluntary organisation which provides advice or assistance for detained persons in connection with proceedings under Pt III (ss 44-55) (not yet in force) (bail: see paras 219-224 post): s 55(1) (not yet in force). Such grants may be made on such terms, and subject to such conditions, as the Secretary of State may determine: s 55(2) (not yet in force). Section 55 is to be brought into force as from a day to be appointed by order made by the Secretary of State under s 170(4). At the date at which this volume states the law no such day had been appointed. See para 219 note 1 post.

5 Ibid s 83(3). 'Immigration services' means the making of representations on behalf of a particular individual in civil proceedings before a court, tribunal or adjudicator in the United Kingdom, or in correspondence with a Minister of the Crown or government department: s 82(1). References to the provision of immigration advice or immigration services are references to the provision of such advice or services by a person in the United Kingdom (regardless of whether the persons to whom they are provided are in the United Kingdom or elsewhere) and in the course of a business carried on (whether or not for profit) by him or by another person: s 82(2). 'Minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 354): Immigration and Asylum Act 1999 s 82(1).

6 The functions conferred by ibid Pt V (ss 82-93). In addition, the Commissioner has certain regulatory functions, namely:

- 89 (1) the power to make rules regulating any aspect of the professional practice, conduct or discipline of registered persons or those employed by or under the supervision of registered persons in connection with the provision of immigration advice or immigration services (see s 83(4), Sch 5 paras 1, 2);
- 90 (2) the preparation of a code of standards setting standards of conduct which apply to certain persons providing immigration advice or immigration services (see Sch 5 paras 3, 4); and
- 91 (3) the establishment and operation of a complaints scheme (see Sch 5 paras 5-10).

7 Ibid s 83(5).

8 Ibid s 83(6). The Commissioner has now published Rules and a Code of Standards and established a register of approved advisers.

UPDATE

169 The Immigration Services Commissioner

NOTE 3--1999 Act Sch 5 para 21 amended: Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 41(6).

NOTE 4--1999 Act s 55 repealed: Nationality, Immigration and Asylum Act 2002 s 68(6) (c). 'Relevant matters' now include an application for an immigration employment document: 1999 Act s 82(1) (amended by the 2002 Act s 123(2)). 'Immigration employment document' means a work permit (within the meaning of the Immigration Act 1971 s 33(1)), and any other document which relates to employment and is issued for a purpose of immigration rules or in connection with leave to enter or remain in the United Kingdom: 1999 Act s 82(3) (added by the 2002 Act s 123(3)).

NOTE 6--In head (1) reference to those employed by or under the supervision of registered persons is now to those acting on behalf of registered persons: 1999 Act Sch 5 para 1 (amended by the 2004 Act s 37(5)(a), (b)). 1999 Act Sch 5 paras 3, 4 amended: 2004 Act s 37(5)(c)). 1999 Act Sch 5 paras 5-10 amended: 2002 Act s 140(1); 2004 Act s 37(5)(e)-(k), 38(2).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(3) IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS/170. Registration of qualified persons.

170. Registration of qualified persons.

The Immigration Services Commissioner¹ must prepare and maintain a register of qualified persons². No person may provide immigration advice or services³ unless he is a qualified person⁴. A person is a qualified person if:

- 435 (1) he is registered with the Commissioner or is employed by, or works under the supervision of, such a person⁵;
- 436 (2) he is a member or employee of a body which is a registered person, or works under the supervision of such a member or employee⁶;
- 437 (3) he is authorised by a designated professional body⁷ to practise as a member of the profession whose members are regulated by that body, or works under the supervision of such a person⁸;
- 438 (4) he is registered with, or authorised by, a person in another EEA state⁹ responsible for regulating the provision in that EEA state of advice or services corresponding to immigration advice or immigration services or would be required to be so registered or authorised were he not exempt from such a requirement¹⁰;
- 439 (5) he is authorised by a body regulating the legal profession, or any branch of it, in another EEA state to practise as a member of that profession or branch¹¹; or
- 440 (6) he is employed by a person who falls within head (4) or head (5) above or works under the supervision of such a person or of an employee of such a person¹².

A person who is not a qualified person may provide immigration advice or immigration services if he is a person who: (a) is certified by the Commissioner as exempt ('an exempt person')¹³; (b) is employed by an exempt person¹⁴; (c) works under the supervision of an exempt person or an employee of an exempt person¹⁵; (d) falls within a category of person specified in an order made by the Secretary of State¹⁶; (e) holds an office under the Crown, when acting in that capacity¹⁷; (f) is employed by, or for the purposes of, a government department, when acting in that capacity¹⁸; (g) acts under the control of a government department¹⁹; or (h) is otherwise exercising functions on behalf of the Crown²⁰.

An application for registration under head (1) or head (2) above must be made to the Commissioner in such form and manner, and be accompanied by such information and supporting evidence, as the Commissioner may from time to time determine²¹. If the Commissioner considers that an applicant for registration is competent and otherwise fit to provide immigration advice and immigration services, he must register the applicant²². Registration may be made so as to only have effect: (i) in relation to a specified²³ field of advice or services; (ii) in relation to the provision of advice or services to a specified category of person; (iii) in relation to the provision of advice or services to a member of a specified category of person; or (iv) in specified circumstances²⁴. At such intervals as the Commissioner may determine²⁵, each registered person must submit an application for his registration to be continued²⁶. If the Commissioner considers that an applicant for continued registration is no longer competent or is otherwise unfit to provide immigration advice or immigration services, he must cancel the applicant's registration²⁷; otherwise, the Commissioner must continue the applicant's registration but may, in doing so, vary the registration so as to make it have limited effect, or so as to make it have full effect²⁸. If a registered person fails without reasonable excuse to make an application for continued registration, or to provide any further information or evidence as required, the Commissioner may cancel the person's registration as from such date as he may determine²⁹.

The register must be made available for inspection by members of the public in a legible form at reasonable hours³⁰.

A person convicted of certain offences³¹ is disqualified for registration or continued registration³². A person who provides immigration advice or immigration services in contravention of the provisions described above or of a restraining order³³ is guilty of an offence³⁴. If an offence committed by a body corporate is proved to have been committed with the consent or connivance of an officer³⁵, or to be attributable to neglect on his part, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly³⁶. If it appears to the Commissioner that a person is providing immigration advice or immigration services in contravention of the provisions described above or of a restraining order, and is likely to continue to do so unless restrained, the Commissioner may apply to a county court for an injunction restraining him from doing so³⁷.

1 As to the Commissioner see para 169 ante.

2 Immigration and Asylum Act 1999 s 85(1). The Secretary of State may by order specify fees for the registration or continued registration of persons on the register: s 85(3), Sch 6 para 5(1). As to the fees for registration see the Immigration Services Commissioner (Registration Fees) Order 2000, SI 2000/2735. As from 1 September 2002 the Immigration Services Commissioner (Registration Fees) Order 2000, SI 2000/2735, is revoked and replaced by the Immigration Services Commissioner (Registration Fees) Order 2002, SI 2002/2011. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante.

3 For the meaning of 'immigration advice' see para 169 note 4 ante. For the meaning of 'immigration services' see para 169 note 5 ante.

4 Immigration and Asylum Act 1999 s 84(1). As to exemptions from this requirement see the text and note 16 infra.

5 Ibid s 84(2)(a).

6 Ibid s 84(2)(b).

7 'Designated professional body' means The Law Society, The Institute of Legal Executives, The General Council of the Bar, and equivalent bodies in Scotland and Northern Ireland: ibid ss 82(1), 86(1). The Commissioner must keep under review the list of designated professional bodies, and must report to the Secretary of State if he considers that a designated professional body is failing to provide effective regulation of its members in its provision of immigration advice or immigration services: s 86(9).

If the Secretary of State considers that a designated professional body has consistently failed to provide effective regulation of its members in their provision of immigration advice or immigration services, he may by order amend s 86(1) to remove the name of that body: s 86(2). If the Secretary of State is proposing to do this he must, before so doing, consult the Commissioner and the Legal Services Ombudsman or the equivalent in Scotland or Northern Ireland, notify the body concerned of his proposal and give it a reasonable period within which to make representations, and consider any representations so made: s 86(4)(a), (b), (e), (f). Any such order requires the approval of the Lord Chancellor (s 86(5)(a)) who, before deciding whether or not to give such approval, must consult the Lord Chief Justice, the Master of the Rolls, the President of the Family Division or the Vice-Chancellor (ss 82(1), 86(6)(a)); Courts and Legal Services Act 1990 s 119(1)). There is also provision for consultation in Scotland and Northern Ireland: see the Immigration and Asylum Act 1999 s 86(5), (6). The Secretary of State may also amend s 86(1) to include the name of a body which he considers ought to be designated (whether wholly or in part) on the grounds that it is concerned with regulating the legal profession, or a branch of it, in an EEA state, is not a designated professional body, and is capable of providing effective regulation of its members in their provision of immigration advice or immigration service (s 86(8)), or to remove the name of a designated body which asks to be removed (s 86(2)). No order is to be made under s 86(2) unless a draft of the order has been laid before Parliament and approved by a resolution of each House (s 166(4)(d)), and accordingly any statutory instrument made under s 86(2) is not subject to annulment by a resolution of either House of Parliament (s 166(6)(a)). At the date at which this volume states the law no order had been made under s 86(1) or s 86(2). As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante. As to the Secretary of State see para 2 ante. As to the Legal Services Ombudsman see LEGAL PROFESSIONS VOL 65 (2008) PARAS 424-434.

For the purpose of meeting the costs incurred by the Commissioner in discharging his functions under Pt V (ss 82-93), each designated professional body must pay to the Commissioner, in each year and on such date as may be specified, such fee as may be specified by order of the Secretary of State: s 86(10), (12). At the date at which this volume states the law no such order had been made. Any unpaid fee for which a designated

professional body is liable under s 86(10) may be recovered from that body as a debt due to the Commissioner: s 86(11).

8 Ibid s 84(2)(c).

9 'EEA state' means a state which is a contracting party to the Agreement on the European Economic Area (Oporto, 2 May 1992; OJ L1, 3.1.94, p 3; Cm 2073) as it has effect for the time being: Immigration and Asylum Act 1999 s 167(1).

10 Ibid s 84(2)(d).

11 Ibid s 84(2)(e).

12 Ibid s 84(2)(f).

13 Ibid s 84(4)(a). A certificate of exemption may relate only to a specified description of immigration advice or immigration services: s 84(5). An exemption may be withdrawn by the Commissioner: s 84(7). The Commissioner must keep a record of the persons to whom he has issued a certificate of exemption: s 85(2).

14 Ibid s 84(4)(b).

15 Ibid s 84(4)(c).

16 Ibid s 84(4)(d). A number of institutions and individuals have been specified as institutions and individuals who may lawfully provide immigration advice or immigration services notwithstanding that they are not qualified for the purposes of s 84(1). They are:

- 92 (1) educational institutions authorised to grant degrees or connected with a body so authorised; further education corporations; registered independent schools; persons employed by or on behalf of any such institution when acting as such; students' unions promoting the general interests of their members as students at any such institution or representing the generality of students at such an institution; persons employed by or on behalf of any such students' union when acting as such (Immigration and Asylum Act 1999 (Part V Exemptions: Educational Bodies and Health Service Institutions) Order 2001, SI 2001/1403, art 3, Sch 2 para 1);
- 93 (2) health authorities; special health authorities; primary care trusts; national health service trusts; the Public Health Laboratory Service Board; and any person employed by or on behalf of such a body when acting as such (art 4, Sch 3 para 1); and
- 94 (3) any person who provides immigration advice or immigration services free of charge to an employee or prospective employee who has been granted a work permit, provided he is the employer or prospective employer of the person receiving the advice or services, or an employee of that employer acting as such, and the advice or services he provides are restricted to matters which concern that employee or that employee's spouse and minor children (Immigration and Asylum Act 1999 (Part V Exemption: Relevant Employers) Order 2002, SI 2002/9, arts 2, 3).

The reference to an educational institution authorised to grant degrees or connected with a body so authorised is a reference to a recognised body within the meaning of the Education Reform Act 1988 s 216(4), including any body designated by order under s 216(1) and a body listed in an order under s 216(2); the reference to a further education corporation is a reference to a further education corporation within the meaning of the Further and Higher Education Act 1992 s 17(1) (as amended); and the reference to a registered independent school is a reference to an independent school within the meaning of the Education Act 1996 s 463 (as amended) which has been finally registered in accordance with s 465: see the Immigration and Asylum Act 1999 (Part V Exemptions: Educational Bodies and Health Service Institutions) Order 2001, SI 2001/1403, art 3, Sch 2 para 1; and EDUCATION vol 15(1) (2006 Reissue) para 465 et seq. The reference to a health authority, a special health authority, a primary care trust and a national health service trust is a reference to an appropriate authority or trust established under the National Health Service Act 1977 s 8 (as substituted and amended), s 11 (as amended), or s 16A (as added), or the National Health Service and Community Care Act 1990 s 5 (as amended) respectively; and the reference to the Public Health Laboratory Service Board is a reference to the Board continued in being by the National Health Service Act 1977 s 5(4), (5), Sch 3 (as amended): see the Immigration and Asylum Act 1999 (Part V Exemptions: Educational Bodies and Health Service Institutions) Order 2001, SI 2001/1403, art 4, Sch 3 para 1. 'Students' union' means a students' union within the meaning of the Education Act 1994 Pt II (ss 20-22): see the Immigration and Asylum Act 1999 (Part V Exemptions: Educational Bodies and Health Service Institutions) Order 2001, SI 2001/1403, art 2; and EDUCATION vol 15(2) (2006 Reissue) para 1060 et seq. As to work permits see paras 109-110 ante.

Corresponding educational and health service institutions in Scotland and Northern Ireland are also specified: see the Immigration and Asylum Act 1999 (Part V Exemptions: Educational Bodies and Health Service Institutions) Order 2001, SI 2001/1403, arts 2-4, Sch 1, Sch 2 paras 2, 3, Sch 3 paras 2, 3.

17 Immigration and Asylum Act 1999 s 84(6)(a).

18 Ibid s 84(6)(b).

19 Ibid s 84(6)(c).

20 Ibid s 84(6)(d).

21 Ibid Sch 6 para 1(1). When considering an application for registration, the Commissioner may require the applicant to provide him with such further information or supporting evidence as the Commissioner may reasonably require: Sch 6 para 1(2). No application under Sch 6 para 1 is to be entertained by the Commissioner unless it is accompanied by the specified fee: Sch 6 para 5(2). As to the fee see note 2 supra.

22 Ibid Sch 6 para 2(1).

23 Ie specified by an order made by the Secretary of State: ibid s 86(12). At the date at which this volume states the law no such order had been made.

24 Ibid Sch 6 para 2(2). If a registered person's registration has such limited effect, the provisions of Sch 6 para 2(2)(a), (b) (see heads (i)-(ii) in the text) do not authorise the provision of advice or services falling outside the scope of that registration: s 84(3).

25 Different intervals may be fixed by the Commissioner in relation to different registered persons or descriptions of registered person: ibid Sch 6 para 3(2).

26 Ibid Sch 6 para 3(1). An application for continued registration must be made to the Commissioner in such form and manner, and be accompanied by such information and supporting evidence, as the Commissioner may from time to time determine: Sch 6 para 3(3). When considering an application for continued registration, the Commissioner may require the applicant to provide him with such further information or supporting evidence as the Commissioner may reasonably require: Sch 6 para 3(4). No application under Sch 6 para 3 is to be entertained by the Commissioner unless it is accompanied by the specified fee: Sch 6 para 5(2). As to the fee see note 2 supra.

27 Ibid Sch 6 para 3(5).

28 Ibid Sch 6 para 3(6).

29 Ibid Sch 6 para 3(7).

30 Ibid Sch 6 para 6(1). A copy of the register or of any entry in the register must be provided on payment of a reasonable fee, in written or electronic form, and in a legible form: Sch 6 para 6(2). The provisions for inspection also apply to the record kept by the Commissioner of the persons to whom he has issued a certificate of exemption under s 84(4)(a) (see para 170 ante), and the record kept by the Commissioner of the persons against whom there is in force a direction given by the Immigration Services Tribunal under s 89(8) (see para 171 post): Sch 6 para 6(3).

31 Ie an offence under the Immigration Act 1971 s 25 (as amended) (see para 199 post) or s 26(1)(d), (g) (s 26(1)(d) as amended) (see para 201 post).

32 Immigration and Asylum Act 1999 Sch 6 para 4.

33 'Restraining order' means a direction given by the Immigration Services Tribunal under ibid s 89(8) (see para 171 post) or Sch 5 para 9(3), or an order made by a disciplinary body under s 90(1) (see para 171 post): s 91(2).

34 Ibid s 91(1). A person guilty of such an offence is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both: s 91(1). As to the statutory maximum see para 158 note 20 ante.

35 'Officer', in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity: ibid s 91(4).

36 Ibid s 91(3). If the affairs of a body corporate are managed by its members, this provision applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 91(5).

37 Ibid s 92(1). If the court is satisfied that the application is well-founded, it may grant the injunction in the terms applied for or in more limited terms: s 92(2).

UPDATE

170 Registration of qualified persons

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 2--1999 Act s 85(1) amended: Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 37(2). SI 2002/2011 replaced: Immigration Services Commissioner (Registration Fee) Order 2004, SI 2004/802.

TEXT AND NOTES 5-12--A person is now a qualified person if he is (1) a registered person; (2) authorised by a designated professional body to practise as a member of the profession whose members the body regulates; (3) the equivalent in an EEA state of (a) a registered person; or (b) a person within head (2); (4) a person permitted, by virtue of exemption from a prohibition, to provide in an EEA state advice or services equivalent to immigration advice or services; or (5) acting on behalf of, and under the supervision of, a person within any of heads (1)-(4), whether or not under a contract of employment: 1999 Act s 84(2) (s 84(2), (3) substituted by the 2004 Act s 37(1)). Heads (1) and (5) are subject to any limitation on the effect of a person's registration imposed under the 1999 Act Sch 6 para 2(2) (see TEXT AND NOTES 22-24): s 84(3) (as so substituted).

NOTE 7--The Commissioner must also report to the Secretary of State if he considers that a designated professional body has failed to comply with a request of the Commissioner for the provision of information (whether general or in relation to a particular case or matter): 1999 Act s 86(9) (amended by the 2004 Act s 41(3)). A designated professional body must comply with a request of the Commissioner for the provision of information (whether general or in relation to a specified case or matter): 1999 Act s 86(9A) (added by the 2004 Act s 41(4)). 1999 Act s 86(2) substituted: 2004 Act s 41(2).

Immigration Services Commissioner (Designated Professional Body) (Fees) Order 2008, SI 2008/505; Immigration Services Commissioner (Designated Professional Body) (Fees) Order 2009, SI 2009/458; and Immigration Services Commissioner (Designated Professional Body) (Fees) Order 2010, SI 2010/891 now made under Immigration and Asylum Act 1999 s 86(10), (12).

NOTE 16--Head (2) now includes strategic health authorities and NHS foundation trusts but no longer includes the Public Health Laboratory Service Board (abolished): SI 2001/1403 Sch 3 para 1 (amended by SI 2002/2469, SI 2004/696, SI 2005/1622). In relation to Wales, references to a health authority are now to a local health board: see the References to Health Authorities Order 2007, SI 2007/961.

Head (3) also applies to an employee or a prospective employee who (a) is the subject of an application for a work permit submitted by the prospective employer; or (b) is an EEA national or the family member of an EEA national: see the Immigration and Asylum Act 1999 (Part V Exemption: Relevant Employers) Order 2003, SI 2003/3214, arts 2, 3. Licensed sponsors of Tier 2 and Tier 4 migrants under the Points-based system are exempt from the prohibition imposed under the Immigration and Asylum Act 1999 s

84(1) and the related criminal offence of providing immigration advice or immigration services in breach of s 84: Immigration and Asylum Act 1999 (Part V Exemption: Licensed Sponsors Tiers 2 and 4) Order 2009, SI 2009/506.

TEXT AND NOTE 21--Reference to head (2) omitted: 1999 Act Sch 6 para 1(1) (amended by 2004 Act s 37(6)(a), Sch 4).

TEXT AND NOTE 24--The Commissioner may vary a person's registration so as to make it have limited effect in any of the ways mentioned in the 1999 Act Sch 6 para 2(2), or so as to make it have full effect: Sch 6 para 3A (added by the Nationality, Immigration and Asylum Act 2002 s 140(2)).

NOTE 24--1999 Act s 84(3) substituted: see TEXT AND NOTES 5-12.

NOTE 29--1999 Act Sch 6 para 3(7) amended: 2004 Act s 37(6)(b), Sch 4.

NOTE 34--As to the power of the Commissioner to apply for a warrant to enter and search premises in connection with the commission of an offence under the 1999 Act s 91 see PARA 170A. As to the offence of offering to provide immigration advice or immigration services in breach of s 91 see PARA 170B.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(3) IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS/170A. Power of entry.

170A. Power of entry.

On an application made by the Immigration Services Commissioner¹, a justice of the peace may issue a warrant authorising the Commissioner to enter and search premises². A justice of the peace may issue a warrant in respect of premises only if satisfied that there are reasonable grounds for believing that (1) a non-qualified person has provided immigration advice or immigration services³; (2) there is material⁴ on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and (3)(a) it is not practicable to communicate with a person entitled to grant entry; (b) it is not practicable to communicate with a person entitled to grant access to the evidence; (c) entry to the premises will be prevented unless a warrant is produced; or (d) the purpose of search may be frustrated or seriously prejudiced unless the Commissioner can secure immediate entry on arrival at the premises⁵. The Commissioner may seize and retain anything for which such a search is authorised⁶. A person commits an offence if without reasonable excuse he obstructs the Commissioner in the exercise of a power by virtue of the above provisions⁷. A person guilty of such an offence is liable on summary conviction to one or both of (i) imprisonment for a term not exceeding six months; or (ii) a fine not exceeding level 5 on the standard scale⁸.

1 In the Immigration and Asylum Act 1999 s 92A, a reference to the Commissioner includes a reference to a member of his staff authorised in writing by him: s 92A(7)(a) (s 92A added by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 38(1)). As to the Commissioner see PARA 169.

2 1999 Act s 92A(1). In s 92A, a reference to premises includes a reference to premises used wholly or partly as a dwelling: s 92A(7)(b) (s 92A as added).

3 Is an offence under *ibid* s 91 (see PARA 169) has been committed.

4 In *ibid* s 92A, a reference to material (1) includes material subject to legal privilege within the meaning of the Police and Criminal Evidence Act 1984 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 873); (2) does not include excluded material or special procedure material within the meaning of the 1984

Act (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 875-876); and (3) includes material whether or not it would be admissible in evidence at a trial: 1999 Act s 92A(7)(c).

5 Ibid s 92A(2), (3).

6 Ibid s 92A(4).

7 Ibid s 92A(5).

8 Ibid s 92A(6). As to the standard scale see PARA 81 NOTE 2.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(3) IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS/170B. Offence of advertising services.

170B. Offence of advertising services.

A person commits an offence if he offers to provide immigration advice or immigration services and provision by him of the advice or services would constitute an offence¹. For this purpose, a person offers to provide advice or services if he (1) makes an offer to a particular person or class of person; (2) makes arrangements for an advertisement in which he offers to provide advice or services; or (3) makes arrangements for an advertisement in which he is described or presented as competent to provide advice or services². A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale³. An information relating to such an offence may be tried by a magistrates' court if (a) it is laid within the period of six months beginning with the date (or first date) on which the offence is alleged to have been committed; or (b) it is laid within the period of two years beginning with that date, and within the period of six months beginning with a date certified by the Immigration Services Commissioner⁴ as the date on which the commission of the offence came to his notice⁵.

1 Ie under the Immigration and Asylum Act 1999 s 91 (see PARA 169): s 92B(1) (s 92B added by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 39(1)).

2 1999 Act s 92B(2).

3 Ibid s 92B(3). As to the standard scale see PARA 81 NOTE 2. Section 91(3)-(5) (see PARA 170 TEXT AND NOTES 35, 36) has effect for the purposes of s 92B as it has effect for the purposes of s 91: s 92B(4).

4 As to the Commissioner see PARA 169.

5 1999 Act s 92B(5).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(3) IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS/171. The Immigration Services Tribunal.

171. The Immigration Services Tribunal.

Any person aggrieved by a decision¹ of the Immigration Services Commissioner² relating to registration of persons qualified to provide immigration services or advice may appeal to the Immigration Services Tribunal³ against the decision⁴. If the Tribunal allows an appeal and it considers it appropriate, it may direct the Commissioner: (1) to register the applicant or to

continue the applicant's registration; (2) to make or vary the applicant's registration so as to have limited effect⁵; (3) to restore an exemption⁶; or (4) to quash a recorded decision⁷ and the record of that decision⁸.

If the Tribunal upholds a disciplinary charge laid by the Commissioner against a person, the Tribunal may direct the Commissioner to record the charge and the Tribunal's decision on it for consideration when the registered person next applies for continued registration, or direct the registered person to apply to the Commissioner for continued registration without delay⁹, but only if the person charged is: (a) a registered person; (b) a person employed by, or working under the supervision of, a registered person; (c) a member or employee of a body which is a registered person; or (d) a person working under the supervision of such a member or employee¹⁰. If the person charged is certified by the Commissioner as exempt¹¹, the Tribunal may direct the Commissioner to consider whether to withdraw his exemption¹². If the person charged is found to have charged unreasonable fees for immigration advice or immigration services, the Tribunal may direct him to repay to the clients concerned such portion of those fees as it may determine¹³. The Tribunal may direct the person charged to pay a penalty to the Commissioner of such sum as it considers appropriate¹⁴. The Tribunal may direct that the person charged or any person employed by him or working under his supervision is to be: (i) subject to such restrictions on the provision of immigration advice or immigration services as the Tribunal considers appropriate; (ii) suspended from providing immigration advice or immigration services for such period as the Tribunal may determine; or (iii) prohibited from providing immigration advice or immigration services indefinitely¹⁵.

A disciplinary body¹⁶ may make an order directing that a person subject to its jurisdiction¹⁷ is to be: (A) subject to such restrictions on the provision of immigration advice or immigration services as the body considers appropriate; (B) suspended from providing immigration advice or immigration services for such period as the body may determine; or (C) prohibited from providing immigration advice or immigration services indefinitely¹⁸.

1 le a decision: (1) to refuse an application for registration made under the Immigration and Asylum Act 1999 s 85(3), Sch 6 para 1 (see para 170 ante); (2) to withdraw an exemption given under s 84(4) (see para 170 ante); (3) to register with limited effect under Sch 6 para 2(2) (see para 170 ante); (4) to refuse an application for continued registration under Sch 6 para 3 (see para 170 ante); (5) to vary a registration under Sch 6 para 3 (see para 170 ante); or (6) which is recorded under s 83, Sch 5 para 9(1)(a): s 87(3). The 'complaints scheme' means the scheme established under Sch 5 para 5(1) (see para 169 ante): s 82(1). On determining a complaint under the complaints scheme, the Commissioner may, if the person to whom the complaint relates is a registered person or a person employed by, or working under the supervision of, a registered person, record the complaint and the decision on it for consideration when that registered person next applies for his registration to be continued: Sch 5 para 9(1)(a).

2 As to the Commissioner see para 169 ante.

3 The Tribunal consists of such number of members appointed by the Lord Chancellor as he may determine: Immigration and Asylum Act 1999 s 87(5), Sch 7 para 1(1), (2). Members must be legally qualified or appear to the Lord Chancellor to have had substantial experience in immigration services or the law and procedure relating to immigration: Sch 7 para 1(3). The Lord Chancellor must appoint one of the legally qualified members (ie a person with a seven year general qualification (see the Courts and Legal Services Act 1990 s 71 (as amended); and LEGAL PROFESSIONS vol 65 (2008) para 742) as President of the Tribunal: Immigration and Asylum Act 1999 Sch 7 paras 2, 11. Each member holds and vacates office in accordance with the terms of his appointment, is eligible for re-appointment when his term of office ends, may resign at any time by notice in writing given to the Lord Chancellor, and may be dismissed on the ground of incapacity or misconduct: Sch 7 para 3. The Lord Chancellor may pay to any member such remuneration and expenses as he may determine: Sch 7 para 4. The Tribunal is to sit at such times and in such places as the Lord Chancellor may direct: Sch 7 para 5. The Commissioner is entitled to be represented before the Tribunal, in relation to the hearing of appeals or disciplinary charges, by such persons as he may authorise in relation to proceedings or categories of proceedings specified by him: Sch 7 para 6. The Lord Chancellor may appoint such staff for the Tribunal as he considers appropriate and may pay such pensions, allowances and gratuities as he considers appropriate: Sch 7 para 9. The Lord Chancellor may pay such other expenses of the Tribunal as he considers appropriate: Sch 7 para 10. Members of the Tribunal are disqualified for membership of the House of Commons and the Northern Ireland Assembly: Sch 7 paras 12, 13.

The Lord Chancellor may make rules as the procedure and practice to be followed in relation to the exercise of the Tribunal's functions: Sch 7 para 7(1). Subject to the provisions of Sch 7 and the rules, the Tribunal may determine its own procedure: Sch 7 para 7(3). The rules must make provision for any person appealing to the Tribunal or otherwise subject to its jurisdiction to be entitled to be legally represented: Sch 7 para 7(4). The rules may, in particular, make provision: (1) as to the mode and burden of proof and the giving and admissibility of evidence; (2) for proceedings before the Tribunal to be capable of being determined in the absence of any party to the proceedings if that party has failed, without reasonable excuse, to appear before the Tribunal or has failed to comply with any reasonable directions given by the Tribunal as to the conduct of the proceedings; (3) with respect to other matters preliminary or incidental to, or arising out of, any matter with respect to which the Tribunal is or may be exercising functions; (4) as to the period within which an appeal against a decision of the Commissioner can be brought; (5) authorising such functions of the Tribunal as may be specified in the rules to be exercised by a single member: Sch 7 para 7(5). The rules must include provision requiring the Tribunal to consider applications by the Commissioner for the cancellation or variation of directions given under Sch 7 para 8: Sch 7 para 8(3). As to the rules that have been made see the Immigration Services Tribunal Rules 2000, SI 2000/2739 (amended by SI 2002/1716). As to the making of rules under the Immigration and Asylum Act 1999 see para 219 note 11 ante.

4 Ibid s 87(2). The Tribunal may also hear disciplinary charges laid by the Commissioner under Sch 5 para 9(1)(e): s 87(4).

5 Ie in any of the ways mentioned in ibid Sch 6 para 2(2): see para 170 ante.

6 Ie an exemption granted under ibid s 84(4)(a): see para 170 ante.

7 Ie recorded under ibid Sch 5 para 9(1)(a): see the text and note 1 supra.

8 Ibid s 88(1), (2).

9 Ibid s 89(1), (3).

10 Ibid s 89(2).

11 Ie under ibid s 84(4): see para 170 ante.

12 Ibid s 89(4).

13 Ibid s 89(5). A direction so given by the Tribunal may be enforced by the clients concerned (or by the Commissioner) as if it were an order of a county court: s 89(7).

14 Ibid s 89(6). A direction so given by the Tribunal may be enforced by the clients concerned (or by the Commissioner) as if it were an order of a county court: s 89(7).

15 Ibid s 89(8). The Commissioner must keep a record of the persons against whom there is in force such a direction given by the Tribunal: s 89(9).

16 'Disciplinary body' means any body appearing to the Secretary of State to be established for the purpose of hearing disciplinary charges against members of a designated professional body, and specified in an order made by the Secretary of State: ibid s 90(2). The Secretary of State must consult the designated professional body concerned before making such an order: s 90(3). At the date at which this volume states the law no such order had been made. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante. For the meaning of 'designated professional body' see para 170 note 7 ante.

17 A person is subject to the jurisdiction of a disciplinary body if he is an authorised person or works under the supervision of an authorised person: ibid s 90(4). 'Authorised person' means a person who is authorised by the designated professional body concerned to practise as a member of the profession whose members are regulated by that body: s 90(5).

18 Ibid s 90(1).

UPDATE

171 The Immigration Services Tribunal

NOTE 1--Head (6) omitted: s 87(3) (amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 40, Sch 4). Also, head (7) to vary a registration under the 1999 Act Sch 6 para 3A (see PARA 170): s 87(3) (amended by the

Nationality, Immigration and Asylum Act 2002 s 140(3)). Reference to a person employed by, or working under the supervision of, a registered person is now to a person acting on behalf of a registered person: 1999 Act Sch 5 para 9(1)(a) (amended by the 2004 Act s 37(5)(h)).

NOTE 3--1999 Act Sch 7 para 11 amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 32.

1999 Act Sch 7 para 3 amended: Constitutional Reform Act 2005 Sch 4 para 285. See also 2005 Act s 85, Sch 14 Pt 3; and COURTS vol 10 (Reissue) PARA 515B.18. See further 2005 Act s 19, Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

TEXT AND NOTES 9, 10--Now, if the Tribunal upholds a disciplinary charge laid by the Commissioner against a person and the person charged is a registered person or acts on behalf of a registered person, the Tribunal may (1) direct the Commissioner to record the charge and the Tribunal's decision for consideration in connection with the registered person's next application for continued registration; and (2) direct the registered person to apply for continued registration as soon as is reasonably practicable: 1999 Act s 89(2) (substituted for s 89(2), (3) by the 2004 Act s 37(3)(a)).

TEXT AND NOTE 15--Reference to a person employed by the person charged or working under his supervision is now to a person acting on his behalf or under his supervision: 1999 Act s 89(8) (amended by the 2004 Act s 37(3)(b)).

NOTE 17--Reference to a person who works under the supervision of an authorised person is now to a person who is acting on behalf of an authorised person: 1999 Act s 90(4) (amended by the 2004 Act s 37(4)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(3) IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS/172. Disclosure of information.

172. Disclosure of information.

No enactment or rule of law prohibiting or restricting the disclosure of information prevents a person from giving the Immigration Services Commissioner¹ information which is necessary for the discharge of his functions, or giving the Immigration Services Tribunal² information which is necessary for the discharge of its functions³. No relevant person⁴ may at any time disclose information which has been obtained by, or given to, the Commissioner under or for the purposes of the Immigration and Asylum Act 1999, which relates to an identified or identifiable individual or business, and is not at that time, and has not previously been, available to the public from other sources, unless the disclosure is made with lawful authority⁵.

A person who knowingly or recklessly discloses information in contravention of these provisions is guilty of an offence⁶.

1 As to the Commissioner see para 169 ante.

2 As to the Tribunal see para 171 ante.

3 Immigration and Asylum Act 1999 s 93(1).

4 'Relevant person' means a person who is or has been the Commissioner, a member of the Commissioner's staff, or an agent of the Commissioner: *ibid* s 93(5).

5 Ibid s 93(2). A disclosure is made with lawful authority only if, and to the extent that: (1) it is made with the consent of the individual or of the person for the time being carrying on the business; (2) it is made for the purposes of, and is necessary for, the discharge of any of the Commissioner's functions or any Community obligation of the Commissioner; (3) it is made for the purposes of any civil or criminal proceedings; or (4) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest: s 93(3).

6 Ibid s 93(4). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum, or, on conviction on indictment, to a fine: s 93(4). As to the statutory maximum see para 158 note 20 ante.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/173. Appellate authorities and rules of procedure.

(4) APPEALS

173. Appellate authorities and rules of procedure.

Provisions were made for an Immigration Appeal Tribunal and adjudicators by the Immigration Appeals Act 1969. These continued under the Immigration Act 1971¹, and are now contained in the Immigration and Asylum Act 1999². The members of the Tribunal and the adjudicators, one of whom must be appointed as Chief Adjudicator, are appointed by the Lord Chancellor³.

Appeals may be brought: (1) against exclusion from the United Kingdom⁴; (2) against a variation of or refusal to vary leave to enter or remain, if, as a result, the person may be required to leave the United Kingdom within 28 days⁵; (3) against a decision to make a deportation order or refusal to revoke a deportation order⁶; (4) against the validity of directions for removal⁷; (5) against removal to a particular country or territory⁸; (6) where an authority breaches a person's human rights or racially discriminates⁹; (7) on asylum grounds, against heads (1) to (4) above¹⁰ or against a decision that an asylum claimant make his claim in another country¹¹. EEA nationals and their family members have rights of appeal against refusal to grant, or withdrawal of, residence permits or documents¹². Appeals against decisions taken on political grounds or grounds relating to national security are heard by the Special Immigration Appeals Commission¹³. Members of the Commission are appointed by the Lord Chancellor¹⁴.

There is no provision for any appeal against a decision of the Secretary of State in relation to work permits¹⁵.

No appeal may be made in relation to a decision made on an application if the application was required to be made in a prescribed form but was not made in that form, or the applicant was required to take prescribed steps in relation to the application, or to take such steps at a prescribed time or within a prescribed period, but failed to do so¹⁶.

For the purposes of the Immigration Acts¹⁷ an appeal under Part IV of the Immigration and Asylum Act 1999 is treated as pending during the period beginning when notice of appeal is given and ending when the appeal is finally determined, withdrawn or abandoned¹⁸.

The Lord Chancellor is empowered to make rules for regulating the exercise of rights of appeal, for prescribing the practice and procedure on appeals, including the mode and burden of proof and admissibility of evidence, and for preliminary and incidental matters¹⁹. The rules may include provision:

441 (a) enabling appeals to be determined without a hearing²⁰;

- 442 (b) enabling an adjudicator or the Tribunal to allow or dismiss an appeal without considering its merits: (i) if there has been a failure by one of the parties to comply with a provision of the rules or with a direction given under the rules; or (ii) if one of the parties has failed to attend at a hearing²¹;
- 443 (c) enabling or requiring an adjudicator or the Tribunal to treat an appeal as abandoned in specified circumstances²²;
- 444 (d) enabling the Tribunal, on an appeal from an adjudicator, to remit the appeal to an adjudicator for determination by him in accordance with any directions of the Tribunal, or for further evidence to be obtained with a view to determination by the Tribunal²³;
- 445 (e) as to the circumstances in which: (i) a decision of an adjudicator may be set aside by an adjudicator; or (ii) a decision of the Tribunal may be set aside by the Tribunal²⁴;
- 446 (f) conferring on adjudicators or the Tribunal such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of their functions²⁵;
- 447 (g) as to the procedure to be followed on applications to the Tribunal for leave to appeal²⁶.

The rules must provide that any appellant is to have the right to be legally represented at any hearing of his appeal²⁷.

The Secretary of State may with the consent of the Treasury make grants to any voluntary organisation which provides advice or assistance for, or other services for the welfare of, people with rights of appeal²⁸. Grants are made under this power to the Immigrants Advisory Service and the Refugee Legal Centre. Additionally, community legal services public funding is available for advice and representation at appeals²⁹.

1 See the Immigration Act 1971 s 12 (repealed). The Immigration Appeals Act 1969 was repealed by the Immigration Act 1971 s 34(1), Sch 6.

2 See the Immigration and Asylum Act 1999 ss 56, 57, Schs 2, 3. Appeal rights are set out in Pt IV (ss 56-81) (as amended), and procedures in s 58, Sch 4 (as amended) and in the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333 (as amended): see para 190 et seq post. The Immigration Act 1971 Pt II (ss 12-23), governing appeals, was repealed by the Immigration and Asylum Act 1999 s 169(3), Sch 16.

3 Ibid s 57, Sch 2 para 1, Sch 3 para 1. The Transfer of Functions (Immigration Appeals) Order 1987, SI 1987/465, art 3(2) transferred to the Lord Chancellor from the Secretary of State the latter's power to appoint adjudicators. Provisions for the appointment of adjudicators including the Chief Adjudicator, the Deputy Chief Adjudicator and regional adjudicators, and members of the Tribunal, and for the constitution of the Tribunal are set out in the Immigration and Asylum Act 1999 Schs 2, 3. In particular, whilst the Lord Chancellor may appoint any person as a member of the Tribunal (see Sch 2 para 1), the President and Deputy President of the Tribunal and such number of other members as the Lord Chancellor may determine, and all adjudicators, must be barristers, advocates or solicitors, in each case of not less than seven years' standing, or persons with appropriate legal and other experience (Sch 2 para 1(2), (3), Sch 3 para 2). The Lord Chancellor must appoint one legally qualified member to be President of the Tribunal and another to be Deputy President; the Deputy President has such functions as the President may assign and may act on the President's behalf if he is temporarily absent or unable to act: Sch 2 para 2. The Lord Chancellor may appoint one of the adjudicators as Deputy Chief Adjudicator and may appoint as regional adjudicators such number of the adjudicators as he may determine and such persons have such functions as the Chief Adjudicator may assign: Sch 3 para 1(1)-(3). If the Chief Adjudicator is temporarily absent or unable to act the Deputy Chief Adjudicator may act on his behalf: Sch 3 para 1(4). The Chief Adjudicator must allocate duties among the adjudicators and has such other functions as may be conferred on him by the Lord Chancellor: Sch 3 para 6(2). The Chief Adjudicator may direct that an appeal be heard by more than one adjudicator: Sch 3 para 6(3). The Tribunal and the adjudicators must sit at such times and in such places as the Lord Chancellor may direct: Sch 2 para 6(1), Sch 3 para 6(1). The Tribunal may sit in two or more divisions, and its jurisdiction may be exercised by such number of members as the President may direct, and directions may be given in relation to a specified case or category of cases; provide for the jurisdiction to be exercised by a single member; require the jurisdiction to be exercised by a legally qualified member or members and be varied by a further direction: Sch 2 para 6. The Lord Chancellor may also appoint such staff for the adjudicators and the Tribunal as he may determine and is responsible for their remuneration: Sch 2 para 7(1), (2), Sch 3 para 7(1), (2). The Lord Chancellor may contract out his function of appointing officers and staff: see the Contracting Out of Functions (Tribunal Staff) Order 2001, SI 2001/3539.

Such expenses of the Tribunal and the adjudicators as the Lord Chancellor may determine are to be defrayed by him: Immigration and Asylum Act 1999 Sch 2 para 7(3), Sch 3 para 7(3). Adjudicators and Tribunal members must hold and vacate office in accordance with the terms of their appointment, are eligible for re-appointment, may resign office at any time by giving written notice to the Lord Chancellor and must vacate office at the age of 70, subject to the Judicial Pensions and Retirement Act 1993 s 26(4)-(6) (power to authorise continuance in office up to the age of 75) (see COURTS vol 10 (Reissue) para 535): Immigration and Asylum Act 1999 Sch 2 para 3, Sch 3 para 3. The Lord Chancellor must pay to the adjudicators and Tribunal members such remuneration and allowances as he may determine and in special circumstances he must pay compensation on cessation of office: Sch 2 paras 4, 5, Sch 3 paras 4, 5.

The President of the Tribunal may give directions as to the practice and procedure to be followed by the Tribunal in relation to appeals and applications to it; and the Chief Adjudicator may give directions as to the practice and procedure to be followed by adjudicators in relation to appeals and applications to them: Sch 4 para 5. See para 190 post.

4 See *ibid* s 59; and para 174 post. For the meaning of 'United Kingdom' see para 5 note 1 ante. EEA nationals and their family members have rights of appeal under the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 29 (as amended): see para 183 post. As to EEA nationals see para 225 et seq post.

5 See the Immigration and Asylum Act 1999 s 61; and para 175 post.

6 See *ibid* s 63; and para 176 post.

7 See *ibid* s 66; and para 177 post.

8 See *ibid* s 67; and para 178 post.

9 See *ibid* s 65 (as amended); and para 179 post.

10 See *ibid* s 69; and para 180 post.

11 See *ibid* s 71; and para 181 post.

12 See the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 29 (as amended); and para 183 post.

13 The Special Immigration Appeals Commission was established by the Special Immigration Appeals Commission Act 1997: see para 184 post.

14 The Special Immigration Appeals Commission consists of such number of members appointed by the Lord Chancellor as he may determine and he must appoint one of its members to be its chairman: *ibid* s 1(2), Sch 1 paras 1(1), 2. The members must hold and vacate office in accordance with the terms of their appointment, are eligible for re-appointment and may resign at any time by notice in writing to the Lord Chancellor: Sch 1 para 1(2), (3). The Lord Chancellor may make payments to the members: see Sch 1 para 3. The Commission must sit at such times and in such places as the Lord Chancellor may direct and may sit in two or more divisions: Sch 1 para 4. The Commission is deemed to be duly constituted if it consists of three members of whom at least one holds or has held high judicial office (within the meaning of the Appellate Jurisdiction Act 1876 (see s 25 (as amended); and COURTS vol 10 (Reissue) para 365)) and at least one is, or has been, appointed as Chief Adjudicator under the Immigration and Asylum Act 1999 s 57(2), or a member of the Immigration Appeal Tribunal qualified as mentioned in Sch 2 para 1(3) (see the text and notes 1-2 *supra*): Special Immigration Appeals Commission Act 1997 Sch 1 para 5 (amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 118, 125). The chairman or, in his absence, such other member of the Commission as he may nominate, presides at sittings of the Commission and reports its decisions: Special Immigration Appeals Commission Act 1997 Sch 1 para 6. The Lord Chancellor may appoint such officers and servants for the Commission as he thinks fit: Sch 1 para 7. The Lord Chancellor must defray the remuneration of such persons and the Commission's expenses as he thinks fit: Sch 1 para 8.

15 The appeal procedure through the appellate bodies set up under the Immigration Acts is limited to situations covered by the scheme of the Acts: *Pasha v Secretary of State for the Home Department* [1993] 2 CMLR 350, IAT (non-EEA national claiming entry rights under EC Treaty as representative of German company, outside scheme). See further para 183 post. As to the remedy of judicial review see para 195 post.

16 Immigration and Asylum Act 1999 s 72(3). Where a form is prescribed or where procedural or other steps are prescribed for a particular kind of application under the Immigration Act 1971 the application must be made in that form and those steps must be taken: s 31A (added by the Immigration and Asylum Act 1999 s 165).

17 For the meaning of 'the Immigration Acts' see para 83 ante.

18 Immigration and Asylum Act 1999 s 58(5). An appeal is not treated as finally determined while a further appeal may be brought, and if such a further appeal is brought, the original appeal is not treated as finally determined until the further appeal is determined, withdrawn or abandoned: s 58(6), (7). A pending appeal under Pt IV (as amended) is treated as abandoned if the appellant leaves the United Kingdom: s 58(8). For the procedure on appeals see para 190 post.

19 Ibid s 58, Sch 4 para 3. The rules in force at the date at which this volume states the law are the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333 (as amended). See further paras 190-191 post. As to the making of rules under the Immigration and Asylum Act 1999 see para 219 note 11 post.

20 Immigration and Asylum Act 1999 Sch 4 para 4(1)(a).

21 Ibid Sch 4 para 4(1)(b).

22 Ibid Sch 4 para 4(1)(c).

23 Ibid Sch 4 para 4(1)(d).

24 Ibid Sch 4 para 4(1)(e).

25 Ibid Sch 4 para 4(1)(f).

26 Ibid Sch 4 para 4(1)(g). Applications for leave to appeal are made under Sch 4 para 23: see para 188 post.

27 Ibid Sch 4 para 4(2). Nothing in Sch 4 para 4 affects the scope of the power conferred by Sch 4 para 3: Sch 4 para 4(3).

28 Ibid s 81(1). Grants may be made on such terms, and subject to such conditions, as the Secretary of State may determine: s 81(2). The rights of appeal referred to in s 81 include appeals under the Special Immigration Appeals Commission Act 1997 s 2 (as amended), s 2A (as added and amended) (see para 184 post): s 2(3), Sch 2 para 7 (substituted by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 118, 129; and amended by the Race Relations (Amendment) Act 2000, s 9(1), Sch 2 para 29(b)). Any grants made under the Immigration and Asylum Act 1999 s 81 by the Secretary of State are defrayed out of money provided by Parliament: see s 168(1). As to representation see para 190 note 2 post.

29 Community legal funding was made available for representation at immigration appeals before the adjudicator and the Immigration Appeal Tribunal from 1 January 2000 by the Community Legal Service (Funding) Order 2000, SI 2000/627 (amended by SI 2001/831; SI 2001/1541; SI 2001/2996).

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

173 Appellate authorities and rules of procedure

NOTE 3--SI 2001/3539 revoked: SI 2009/1307.

NOTES 4, 12--SI 2000/2326 reg 29 now Immigration (European Economic Area) Regulations 2006, SI 2006/1003, reg 26.

NOTE 14--Reference to the 1999 Act s 57(2) is now to the Nationality, Immigration and Asylum Act 2002 s 81(3)(a); and reference to 1999 Act Sch 2 para 1(3) is now to 2002 Act Sch 5 para 11: 1997 Act Sch 1 para 5 (amended by 2002 Act Sch 7 para 25).

As from 1 October 2009 (see SI 2009/1604) 1997 Act Sch 1 para 5 further amended: Constitutional Reform Act 2005 Sch 17 para 28.

See further ss 19, 85, Sch 7 para 4, Sch 14 Pt 3; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A; COURTS vol 10 (Reissue) PARA 515B.18.

NOTE 16--1971 Act s 31A amended: 2002 Act s 121. As to regulations made under the 1971 Act s 31A, see now the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2007, SI 2007/882 (amended by SI 2007/1122).

NOTE 18--The 1999 Act s 58(8) does not apply to an appeal to the Court of Appeal access to justice in which cannot be arbitrarily truncated, except in obedience to an unequivocal statutory requirement: *Shirazi v Secretary of State for the Home Department* [2003] EWCA Civ 1562, [2003] All ER (D) 69 (Nov). 1999 Act s 58(8) replaced by 2002 Act s 104(4)(b) (s 104(4) now as substituted by Immigration, Asylum and Nationality Act 2006 s 9).

NOTE 28--1997 Act s 2 substituted, s 2A, Sch 2 repealed: 2002 Act Sch 7 paras 20, 21, 26, Sch 9.

NOTE 29--SI 2000/627 replaced: Community Legal Service (Funding) Order 2007, SI 2007/2441 (amended by SI 2008/1328, SI 2008/2704).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/173A. Appeal to the Asylum and Immigration Tribunal.

173A. Appeal to the Asylum and Immigration Tribunal.

1. The Asylum and Immigration Tribunal

The Lord Chancellor must appoint the members of the Asylum and Immigration Tribunal¹. A person is eligible for appointment as a member of the Tribunal only if he (1) satisfies the judicial-appointment eligibility condition on a five-year basis; (2) has legal experience which in the Lord Chancellor's opinion makes him as suitable for appointment as if he satisfied head (1); or (3) has non-legal experience which in the Lord Chancellor's opinion, makes him suitable for appointment². A member may (a) resign by notice in writing to the Lord Chancellor; (b) ceases to be a member on reaching the age of 70³; and (c) otherwise, holds and vacates office in accordance with the terms of his appointment, which may include provision about the training, appraisal and mentoring of members of the Tribunal by other members, and for removal⁴.

The Lord Chancellor may by order make provision for the title of members of the Tribunal⁵. Further provision regarding the Tribunal has also been made⁶.

1 Nationality, Immigration and Asylum Act 2002 s 81, Sch 4 para 1 (added by Asylum and Immigration (Treatment of Claimants, etc) Act 2004 Sch 1). As to the Lord Chancellor's functions see Constitutional Reform Act 2005 s 19, Sch 7 para 4 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A) and s 85 (see COURTS vol 10 (Reissue) PARA 515B.18).

2 2002 Act Sch 4 para 2(1) (added by 2004 Act Sch 1; and amended by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 37). A person appointed under heads (1), (2) is known as a legally qualified member of the Tribunal: 2002 Act Sch 4 para 2(2) (added by 2004 Act Sch 1). As to the Lord Chancellor's functions see NOTE 1.

3 Ie subject to the Judicial Pensions and Retirement Act 1993 s 26(4)-(6): 2002 Act Sch 4 para 3(2) (added by 2004 Act Sch 1).

4 2002 Act Sch 4 para 3(1) (added by 2004 Act Sch 1).

5 2002 Act Sch 4 para 4(1) (added by 2004 Act Sch 1; 2002 Act Sch 4 para 4 amended by SI 2006/1016). As to such provision, see the Asylum and Immigration Tribunal (Judicial Titles) Order 2005, SI 2005/227. An order under the 2002 Act Sch 4 para 4(1) relating to members sitting in England and Wales may only be made with the concurrence of Lord Chief Justice of England and Wales: Sch 4 para 4(2) (added by SI 2006/1016).

6 2002 Act s 81(2). As to such provision see Sch 4 paras 5-12 (added by 2004 Act Sch 1; 2002 Act Sch 4 para 5 amended by SI 2006/1016; and further amended as from 1 October 2009 (see SI 2009/1604) by Constitutional Reform Act 2005 Sch 17 para 34). See further Sch 7 para 4, Sch 14 Pt 3 (Sch 14 Pt 3 amended by SI 2006/678).

2. Right of appeal: general

Where an immigration decision is made in respect of a person he may appeal to the Asylum and Immigration Tribunal¹. 'Immigration decision' means

- 448 (1) refusal of leave to enter the United Kingdom;
- 449 (2) refusal of entry clearance;
- 450 (3) refusal of a certificate of entitlement²;
- 451 (4) refusal to vary a person's leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain;
- 452 (5) variation of a person's leave to enter or remain in the United Kingdom if when the variation takes effect the person has no leave to enter or remain;
- 453 (6) revocation of indefinite leave to enter or remain in the United Kingdom³;
- 454 (7) a decision that a person is to be removed from the United Kingdom by way of specified directions relating to the removal of persons unlawfully in United Kingdom⁴;
- 455 (8) a decision that an illegal entrant is to be removed from the United Kingdom by way of specified directions relating to the control of entry⁵;
- 456 (9) a decision that a person is to be removed from the United Kingdom by way of directions⁶;
- 457 (10) a decision that a person is to be removed from the United Kingdom by way of specified directions relating to a member of that person's family⁷;
- 458 (11) a decision to make a specified order⁸;
- 459 (12) a decision that a person is to be removed from the United Kingdom by way of directions given to the captain of a ship or aircraft or its owners or agents⁹;
- 460 (13) a decision to make a deportation order¹⁰; and
- 461 (14) refusal to revoke a deportation order¹¹.

While a person's appeal is pending¹² he may not be removed from the United Kingdom in accordance with a provision of the Immigration Acts, or required to leave the United Kingdom in accordance with a provision of the Immigration Acts¹³. However, this does not prevent any of the following while an appeal is pending:

- 462 (a) the giving of a direction for the appellant's removal from the United Kingdom,
- 463 (b) the making of a deportation order in respect of the appellant¹⁴, or
- 464 (c) the taking of any other interim or preparatory action¹⁵.

A deportation order may not be made in respect of a person while an appeal against the decision to make the order could be brought, ignoring any possibility of an appeal out of time with permission, or is pending¹⁶.

1 Nationality, Immigration and Asylum Act 2002 s 82(1) (amended by Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 26(2)). An appeal under the 2002 Act s 82(1) against a decision must be treated by the Tribunal as including an appeal against any decision in respect of which the appellant has a right of appeal under s 82(1): s 85(1) (amended by 2004 Act Sch 2 para 18). If an appellant under the 2002 Act s 82(1) makes

a statement under s 120, the Tribunal must consider any matter raised in the statement which constitutes a ground of appeal of a kind listed in s 84(1) against the decision appealed against: s 85(2) (amended by 2004 Act Sch 2 para 18). The 2002 Act s 85(2) applies to a statement made under s 120 whether the statement was made before or after the appeal was commenced: s 85(3). On an appeal under s 82(1) s 83(2) or s 83A(2) against a decision, the Tribunal may consider evidence about any matter which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision: s 85(4) (amended by 2004 Act Sch 2 para 18; and Immigration, Asylum and Nationality Act 2006 Sch 1 para 3). In relation to an appeal under the 2002 Act s 82(1) against refusal of entry clearance or refusal of a certificate of entitlement under s 10, s 85(4) does not apply, and the Tribunal may consider only the circumstances appertaining at the time of the decision to refuse: s 85(5) (amended by 2004 Act Sch 2 para 18). As from a day to be appointed s 85(5) substituted, s 85A added: UK Borders Act 2007 s 19(1), (2). See *AS (Somalia) v Secretary of State for the Home Department* [2009] UKHL 32, [2009] 4 All ER 711.

The Lord Chancellor may make rules regulating the exercise of the right of appeal under the 2002 Act s 82, 83 or 83A or by virtue of s 109 and prescribing procedure to be followed in connection with proceedings under s 82: s 106(1)-(3) (amended by 2004 Act Sch 2 para 21; 2006 Act Sch 1 para 9; and UK Borders Act 2007 s 19(3) (not yet in force)). In making such rules, the Lord Chancellor must aim to ensure that the rules are designed to ensure that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible, and that the rules, where appropriate, confer on members of the Tribunal responsibility for ensuring that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible: 2002 Act s 106(1A) (added by 2004 Act Sch 2 para 21). As to rules prescribing the procedure to be followed for appeals and applications to the Asylum and Immigration Tribunal see the Asylum and Immigration Tribunal (Procedure) Rules 2005, SI 2005/230 (amended by SI 2005/569, SI 2006/2788, SI 2007/835, SI 2007/3170, SI 2008/1088, SI 2008/2683). See *DK (Serbia) v Secretary of State for the Home Department* [2006] EWCA Civ 1747, [2007] 2 All ER 483; *AM (Serbia) v Secretary of State for the Home Department* [2007] EWCA Civ 16, [2007] All ER (D) 192 (Jan); *SK (Sri Lanka) v Secretary of State for the Home Department* [2008] EWCA Civ 495, [2008] All ER (D) 190 (May); *MY (Turkey) v Secretary of State for the Home Department* [2008] All ER (D) 101 (Apr), CA; and *NB (Guinea) v Secretary of State for the Home Department*; *ZD (Turkey) v Secretary of State for the Home Department* [2008] EWCA Civ 1229, [2008] All ER (D) 121 (Nov).

As to rules prescribing a fast-track procedure to be followed for appeals where the appellant is being detained at a specified location see the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005, SI 2005/560 (amended by SI 2006/2789 (amended by SI 2006/2898)). As to the time limits for review applications made by parties to fast track appeals see the Asylum and Immigration (Fast Track Time Limits) Order 2005, SI 2005/561 (amended by SI 2008/1089). As to the Secretary of State's duty to defray the costs of providing an interpreter in the Asylum and Immigration Tribunal, see the Asylum (Procedures) Regulations 2007, SI 2007/3187, reg 5.

A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed in accordance with rules under the 2002 Act s 106(1) to attend before the Tribunal to give evidence, or to produce a document, and a person who is guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 106(4), (5).

2 le under *ibid* s 10.

3 le revocation under *ibid* s 76. A variation or revocation of the kind referred to in head (5) or head (6) does not have effect while an appeal under s 82(1) against that variation or revocation could be brought (ignoring any possibility of an appeal out of time with permission), or is pending.

4 le under the Immigration and Asylum Act 1999 s 10(1)(a), 10(1)(b) 10(1)(ba) or 10(1)(c).

5 le directions under the Immigration Act 1971 Sch 2 paras 8-10.

6 le directions under the Immigration, Asylum and Nationality Act 2006 s 47 (removal: persons with statutorily extended leave).

7 le directions given by virtue of the Immigration Act 1971 Sch 2 para 10A.

8 le under *ibid* s 2A (added by 2006 Act s 57(1)).

9 le directions under the 1971 Act Sch 2 para 12(2).

10 le under *ibid* s 5(1).

Head (13) does not apply to a decision to make a deportation order which states that it is made in accordance with the UK Borders Act 2007 s 32(5); but (1) a decision that s 32(5) applies is an immigration decision for the purposes of the 2002 Act Pt 5, and (2) a reference in Pt 5 to an appeal against an automatic deportation order is a reference to an appeal against a decision of the Secretary of State that the 2007 Act s 32(5) applies: 2002 Act s 82(3A) (added by 2007 Act s 35(3)) (in force for certain purposes: SI 2008/1818).

11 2002 Act s 82(2) (amended by 2004 Act s 31; and 2006 Act ss 2, 47(6), 57(2)). The refusal to revoke is a refusal under the 1971 Act s 5(2). The Secretary of State may make regulations requiring a person to be given written notice where an immigration decision is taken in respect of him: 2002 Act s 105(1).

Where a person has made an application to enter or remain in the United Kingdom, or an immigration decision within the meaning of s 82 has been taken or may be taken in respect of him, the Secretary of State or an immigration officer may by notice in writing require the person to state his reasons for wishing to enter or remain in the United Kingdom, any grounds on which he should be permitted to enter or remain in the United Kingdom, and any grounds on which he should not be removed from or required to leave the United Kingdom: s 120(1), (2). The Secretary of State is entitled to impose a reasonable time limit for the return of a statement of reasons: *R (on the application of Khan) v Secretary of State for the Home Department* [2008] All ER (D) 01 (Mar).

A claimant's failure to avail herself of the unqualified right of appeal within the time limit set does not amount to a deprivation of the right: *R (on the application of Kagabo) v Secretary of State for the Home Department* [2009] EWHC 153 (Admin), [2009] All ER (D) 115 (Feb).

Removal directions are not themselves an immigration decision subject to appeal, and it would therefore be anomalous to allow future removal directions which have not yet been made to be challenged as part of the statutory appeal scheme: *MS (Palestinian Territories) v Secretary of State for the Home Department* [2009] EWCA Civ 17, [2009] All ER (D) 168 (Jan).

12 'Pending' has the meaning given by Nationality, Immigration and Asylum Act 2002 s 104: s 78(2).

13 Ibid s 78(1), which applies only to an appeal brought while the appellant is in the United Kingdom in accordance with s 92: s 78(4).

14 Ie subject to ibid s 79.

15 Ibid s 78(3). The fact that the legislation provides for an out-of-country appeal means that judicial review is unlikely to be an appropriate remedy, despite the hardships: *R (on the application of Lim) v Secretary of State for the Home Department* [2007] EWCA Civ 773, [2007] All ER (D) 402 (Jul).

16 Nationality, Immigration and Asylum Act 2002 s 79(1). 'Pending' has the meaning given by s 104: s 79(2). The Court of Appeal has an inherent jurisdiction to stay a removal direction for a claimant between the time when an out-of-time application for permission to appeal has been filed at the Civil Appeals Office and the time when the application is determined: *YD (Turkey) v Secretary of State for the Home Department* [2006] EWCA Civ 52, [2006] 1 WLR 1646; applied in *R (on the application of RG) v Secretary of State for the Home Department* [2006] EWCA Civ 396, [2006] All ER (D) 141 (Apr). See *BR (Iran) v Secretary of State for the Home Department*; *MD (Iran) v Secretary of State for the Home Department* [2007] EWCA Civ 198, [2007] 3 All ER 318.

The following provisions are in force for certain purposes: SI 2008/1818. The 2002 Act s 79 does not apply to a deportation order which states that it is made in accordance with the UK Borders Act 2007 s 32(5): 2002 Act s 79(3) (s 79(3), (4) added by 2007 Act s 35(2)). But a deportation order made in reliance on the 2002 Act s 79(3) does not invalidate leave to enter or remain, in accordance with the Immigration Act 1971 s 5(1), if and for so long as the 2002 Act s 78 applies: s 79(4).

3. Appeal: asylum claim

Where a person has made an asylum claim and his claim has been rejected by the Secretary of State, but he has been granted leave to enter or remain in the United Kingdom for a period exceeding one year (or for periods exceeding one year in aggregate), he may appeal to the Asylum and Immigration Tribunal against the rejection of his asylum claim¹.

Where (1) a person has made an asylum claim, (2) he was granted limited leave to enter or remain in the United Kingdom as a refugee within the meaning of the Refugee Convention, (3) a decision is made that he is not a refugee, and (4) following the decision specified in head (3) above he has limited leave to enter or remain in the United Kingdom otherwise than as a refugee, the person may appeal to the Tribunal against the decision to curtail or to refuse to extend his limited leave².

1 Nationality, Immigration and Asylum Act 2002 s 83(1), (2) (amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 26(3)). As to the matters to be considered on such an appeal, see the 2002 Act s 85. The Lord Chancellor may make rules regulating the exercise of the right of appeal under s 83 or

83A and prescribing procedure to be followed in connection with proceedings under s 83 or 83A: s 106(1)-(3) (amended by Immigration, Asylum and Nationality Act 2006 Sch 1 para 9; prospectively amended by UK Borders Act 2007 s 19(3)). As to rules prescribing the procedure to be followed for appeals and applications to the Asylum and Immigration Tribunal see the Asylum and Immigration Tribunal (Procedure) Rules 2005, SI 2005/230; and PARA 173A.2. See *DK (Serbia) v Secretary of State for the Home Department* [2006] EWCA Civ 1747, [2006] All ER (D) 312 (Dec); and *R (on the application of Omondi) v Secretary of State for the Home Department* [2009] EWHC 827 (Admin), [2009] All ER (D) 155 (Apr). Rules have also been made prescribing a fast-track procedure to be followed for appeals where the appellant is being detained at a specified location: Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005, SI 2005/560 (amended by SI 2008/1089). As to the time limits for review applications made by parties to fast track appeals, see the Asylum and Immigration (Fast Track Time Limits) Order 2005, SI 2005/561.

A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed in accordance with rules under the 2002 Act s 106(1) to attend before the Tribunal to give evidence, or to produce a document, and a person who is guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 106(4), (5) (amended by the 2004 Act Sch 2 para 21). As to the standard scale see PARA 81.

2 2002 Act s 83A(1), (2) (added by Immigration, Asylum and Nationality Act 2006 s 1).

4. Grounds of appeal

An appeal against an immigration decision¹ must be brought on one or more of the following grounds:

- 465 (1) that the decision is not in accordance with immigration rules;
- 466 (2) that the decision is unlawful by virtue of the Race Relations Act 1976²;
- 467 (3) that the decision is unlawful under the Human Rights Act 1998³ as being incompatible with the appellant's Convention rights;
- 468 (4) that the appellant is an EEA national⁴ or a member of the family of an EEA national and the decision breaches the appellant's rights under the Community Treaties⁵ in respect of entry to or residence in the United Kingdom;
- 469 (5) that the decision is otherwise not in accordance with the law;
- 470 (6) that the person taking the decision should have exercised differently a discretion conferred by immigration rules;
- 471 (7) that removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom's obligations under the Refugee Convention or would be unlawful under the Human Rights Act 1998⁶ as being incompatible with the appellant's Convention rights⁷.

An appeal in relation to an asylum claim must be brought on the grounds that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention⁸.

1 I.e. under the Nationality, Immigration and Asylum Act 2002 s 82(1) (amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 26(2)).

2 I.e. by virtue of the Race Relations Act 1976 s 19B: see DISCRIMINATION vol 13 (2007 Reissue) para 470.

3 I.e. under the Human Rights Act 1998 s 6: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 104A.3.

4 'EEA national' means a national of a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992: 2002 Act s 84(2).

5 Regulations may provide for, or make provision about, an appeal against an immigration decision taken in respect of a person who has or claims to have a right under any of the Community Treaties: s 109(1). 'Immigration decision' means a decision about a person's entitlement to enter or remain in the United Kingdom, or removal of a person from the United Kingdom: s 109(3).

6 le under the 1998 Act s 6.

7 2002 Act s 84(1). Where a person appeals under s 82 or s 83 wholly or partly on the ground that to remove him from or to require him to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention (see para 83 NOTE 3), and the Secretary of State issues a certificate that presumptions under s 72(2), (3) or (4) apply to the person (subject to rebuttal), the Tribunal or Commission hearing the appeal must begin substantive deliberation on the appeal by considering the certificate, and if in agreement that presumptions under s 72(2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the ground specified in s 72(9)(a): s 72(10), (11) (amended by the 2004 Act Sch 2 para 17).

When determining an appeal under head (7) of the text, there is no difference in principle between consideration of the position within the territory in which the appellant fears persecution or ill-treatment and consideration of the position at its border: *AK v Secretary of State for the Home Department* [2006] EWCA Civ 1117, [2006] All ER (D) 470 (Jul). Permission to appeal should only be granted on one or more of the grounds advanced: *M v Secretary of State for the Home Department* [2006] All ER (D) 384 (May), CA.

8 2002 Act s 84(3). An appeal under s 83A (see PARA 173A.3) must be brought on the grounds that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention: s 84(4) (added by Immigration, Asylum and Nationality Act 2006 s 3).

5. Determination of appeal and direction following successful appeal

On an appeal under the general right to appeal¹, the right to appeal in an asylum claim² or an appeal relating to the variation of leave to enter or remain³, the Asylum and Immigration Tribunal must determine any matter raised as a ground of appeal⁴, and any matter which it is required to consider⁵. The Tribunal must allow the appeal in so far as it thinks that a decision against which the appeal is brought or is treated as being brought was not in accordance with the law (including immigration rules), or a discretion exercised in making a decision against which the appeal is brought or is treated as being brought should have been exercised differently⁶. In so far as the foregoing does not apply, the Tribunal must dismiss the appeal⁷.

If the Tribunal allows an appeal under the general right to appeal, the right to appeal in an asylum claim or an appeal relating to the variation of leave to enter or remain, it may give a direction for the purpose of giving effect to its decision⁸. A person responsible for making an immigration decision must act in accordance with any such direction⁹. Such a direction does not have effect in specified circumstances¹⁰.

1 le under the Nationality, Immigration and Asylum Act 2002 s 82(1) (amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 26(2)).

2 le under the 2002 Act s 83 (amended by the 2004 Act s 26(3)).

3 le under the 2002 Act s 83A (added by Immigration, Asylum and Nationality Act 2006 s 1).

4 le whether or not by virtue of the 2002 Act s 85(1) (amended by the 2004 Act Sch 2 para 18).

5 2002 Act s 86(1), (2) (amended by the 2004 Act Sch 2 para 18; and the 2006 Act Sch 1 para 4). The requirement to consider arises under the 2002 Act s 85. Where the appeal is under both the Convention relating to the Status of Refugees 1951 and the European Convention on Human Rights, the Tribunal should deal with each aspect of the appeal separately and express its reasons in a clear and separate manner in its decision: *I v Secretary of State for the Home Department* [2005] All ER (D) 349 (Jun), CA. Inadequate reasons invalidate a decision if it is one to which no tribunal could sensibly have come: *Barikzai v Secretary of State for the Home Department* [2006] EWCA Civ 922, [2006] All ER (D) 302. The Tribunal should not rely on an assurance by the Secretary of State that a failed asylum-seeker will not be removed until her outstanding application for contact with her children has been resolved: *MS (Ivory Coast) v Secretary of State for the Home Department* [2007] EWCA Civ 133, (2007) Times, 27 March.

6 2002 Act s 86(3) (amended by the 2004 Act Sch 2 para 18). For the purposes of the 2002 Act s 86(3), a decision that a person should be removed from the United Kingdom under a provision shall not be regarded as unlawful if it could have been lawfully made by reference to removal under another provision: s 86(4). Refusal to depart from or to authorise departure from immigration rules is not the exercise of a discretion for the purposes of s 86(3).

7 Ibid s 86(5) (amended by the 2004 Act Sch 2 para 18).

8 2002 Act s 87(1) (amended by the 2004 Act Sch 2 para 18; and the 2006 Act Sch 1 para 5). A direction under the 2002 Act s 87(1) is treated as part of the determination of the appeal for the purposes of s 103A: s 87(4) (amended by the 2004 Act Sch 2 para 19).

9 2002 Act s 87(2).

10 Ibid 87(3) (substituted by the 2004 Act Sch 2 para 19). Such circumstances are while (1) an application under the 2002 Act s 103A(1), other than an application out of time with permission, could be made or is awaiting determination; (2) reconsideration of an appeal has been ordered under s 103A(1) and has not been completed; (3) an appeal has been remitted to the Tribunal and is awaiting determination; (4) an application under s 103B or 103E for permission to appeal, other than an application out of time with permission, could be made or is awaiting determination; (5) an appeal under s 103B or 103E is awaiting determination; or (6) a reference under s 103C is awaiting determination: s 87(3) (as so substituted).

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/173B. Exceptions and limitations.

173B. Exceptions and limitations.

A person may not appeal¹ against an immigration decision² which is taken on the grounds that he or a person of whom he is a dependant:

- 472 (1) does not satisfy a requirement as to age, nationality or citizenship specified in immigration rules;
- 473 (2) does not have an immigration document³ of a particular kind (or any immigration document);
- 474 (3) has failed to supply a medical report or a medical certificate in accordance with a requirement of immigration rules;
- 475 (4) is seeking to be in the United Kingdom for a period greater than that permitted in his case by immigration rules; or
- 476 (5) is seeking to enter or remain in the United Kingdom for a purpose other than one for which entry or remaining is permitted in accordance with immigration rules⁴.

A person may not appeal⁵ against refusal of an application for entry clearance unless the application was made for the purpose of visiting a person of a class or description prescribed by regulations for the purpose of this provision, or entering as the dependant of a person in circumstances prescribed by regulations for the purpose of this provision⁶.

A person may not appeal⁷ against refusal of leave to enter the United Kingdom unless

- 477 (a) on his arrival in the United Kingdom he had entry clearance, and

- 478 (b) the purpose of entry specified in the entry clearance is the same as that specified in his application for leave to enter⁸.

A person may not appeal⁹ while he is in the United Kingdom unless his appeal is of a certain kind¹⁰. The same condition also applies to an appeal against refusal of leave to enter the United Kingdom if the appellant is in the United Kingdom at the time of refusal and, on his arrival in the United Kingdom, the appellant had entry clearance¹¹, unless other circumstances apply¹². The condition also applies to an appeal against refusal of leave to enter the United Kingdom if at the time of the refusal the appellant is in the United Kingdom, has a work permit, and is¹³ a British overseas territories citizen, a British Overseas citizen, a British National (Overseas), a British protected person, or a British subject¹⁴. The condition also applies to an appeal against an immigration decision if the appellant has made an asylum claim, or a human rights claim, while in the United Kingdom, or is an EEA national or a member of the family of an EEA national and makes a claim to the Secretary of State that the decision breaches the appellant's rights under the Community Treaties in respect of entry to or residence in the United Kingdom¹⁵.

A person may not bring an appeal¹⁶ where he has made an asylum claim or a human rights claim (or both)¹⁷ if the Secretary of State certifies that the claim or claims is or are clearly unfounded¹⁸. If the Secretary of State is satisfied that an asylum claimant or human rights claimant is entitled to reside in a specified state¹⁹ he must certify the claim²⁰ unless satisfied that it is not clearly unfounded²¹. A person may not bring such an appeal if the Secretary of State certifies that it is proposed to remove the person to a country of which he is not a national or citizen, and there is no reason to believe that the person's rights under the Human Rights Convention will be breached in that country²². In determining whether a person in relation to whom such a certificate has been issued may be removed from the United Kingdom, the country specified in the certificate is to be regarded as a place where a person's life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion, and a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention²³. Where a person in relation to whom such a certificate is issued subsequently brings an appeal²⁴ while outside the United Kingdom, the appeal must be considered as if he had not been removed from the United Kingdom²⁵.

The Secretary of State must by order prescribe a list of states to be known as the 'European Common List of Safe Countries of Origin'²⁶. The Secretary of State must consider an asylum claim or a human rights claim (or both), by a national of a state which is listed in the European Common List of Safe Countries of Origin or a stateless person who was formerly habitually resident in such a state, to be unfounded unless satisfied that there are serious grounds for considering that the state in question is not safe in the particular circumstances of the person²⁷.

A person who is outside the United Kingdom may not appeal²⁸ on the ground that his removal from the United Kingdom in consequence of the immigration decision would breach the United Kingdom's obligations under the Refugee Convention or would be unlawful under the Human Rights Act 1998 s 6 as being incompatible with the appellant's Convention rights²⁹.

An appeal³⁰ against an immigration decision ('the new decision') in respect of a person may not be brought if the Secretary of State or an immigration officer certifies that:

- 479 (i) the person was notified³¹ of a right to appeal³² against another immigration decision ('the old decision'), whether or not an appeal was brought and whether or not any appeal brought has been determined;
- 480 (ii) the claim or application to which the new decision relates relies on a matter that could have been raised in an appeal against the old decision; and
- 481 (iii) in the opinion of the Secretary of State or the immigration officer, there is no satisfactory reason for that matter not having been raised in an appeal against the old decision³³.

An appeal³⁴ against an immigration decision ('the new decision') in respect of a person may not be brought if the Secretary of State or an immigration officer certifies that:

- 482 (A) the person received a notice³⁵ by virtue of an application other than that to which the new decision relates or by virtue of a decision other than the new decision;
- 483 (B) the new decision relates to an application or claim which relies on a matter that should have been, but has not been, raised in a statement made in response to that notice; and
- 484 (C) in the opinion of the Secretary of State or the immigration officer, there is no satisfactory reason for that matter not having been raised in a statement made in response to that notice³⁶.

An appeal³⁷ against a decision in respect of a person may not be brought or continued if the Secretary of State certifies that the decision is or was taken by him wholly or partly on a specified ground, or in accordance with a direction of his which identifies the person to whom the decision relates and which is given wholly or partly on a specified ground³⁸. The specified grounds are that the person's exclusion or removal from the United Kingdom is in the interests of national security, or in the interests of the relationship between the United Kingdom and another country³⁹. An appeal⁴⁰ against a decision may not be brought or continued if the Secretary of State certifies that the decision is or was taken wholly or partly in reliance on information which in his opinion should not be made public in the interests of national security, in the interests of the relationship between the United Kingdom and another country, or otherwise in the public interest⁴¹.

An appeal⁴² against a refusal of leave to enter the United Kingdom or a refusal of entry clearance may not be brought or continued if the Secretary of State certifies that the decision is or was taken by the Secretary of State wholly or partly on the ground that the exclusion or removal from the United Kingdom of the person to whom the decision relates is conducive to the public good, or in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on that ground⁴³.

Where a certificate is issued⁴⁴ in respect of a pending appeal, the appeal lapses⁴⁵.

1 le under the Nationality, Immigration and Asylum Act 2002 s 82(1).

2 This provision applies to an immigration decision of a kind referred to in *ibid* s 82(2)(a), (b), (d) or (e): s 88(1).

3 'Immigration document' means entry clearance, a passport a work permit or other immigration employment document within the meaning of s 122 (repealed), and a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport: s 88(3).

4 *Ibid* s 88(2) (amended by Immigration, Asylum and Nationality Act 2006 s 5), which does not prevent the bringing of an appeal on any or all of the grounds referred to in the 2002 Act s 84(1)(b), (c) and (g): s 88(4).

5 le under *ibid* s 82(1).

6 *Ibid* s 88A(1) (s 88A added by Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 29(1); and substituted, together with ss 90, 91, by Immigration, Asylum and Nationality Act 2006 s 4(1)). Regulations under the 2002 Act s 88A(1) may, in particular (1) make provision by reference to whether the applicant is a member of the family (within such meaning as the regulations may assign) of the person he seeks to visit; (2) provide for the determination of whether one person is dependent on another; (3) make provision by reference to the circumstances of the applicant, of the person whom the applicant seeks to visit or on whom he depends, or of both (and the regulations may, in particular, include provision by reference to (a) whether or not a person is lawfully settled in the United Kingdom within such meaning as the regulations may assign; (b) the duration of two individuals' residence together); (4) make provision by reference to an applicant's purpose in entering as a

dependant; (5) make provision by reference to immigration rules; (6) confer a discretion: s 88A(2). Section 88A(1) (i) does not prevent the bringing of an appeal on either or both of the grounds referred to in s 84(1)(b) and (c), and (ii) is without prejudice to the effect of s 88 in relation to an appeal under s 82(1) against refusal of entry clearance: s 88A(3).

7 Ie under *ibid* s 82(1).

8 *Ibid* s 89(1) (substituted by Immigration, Asylum and Nationality Act 2006 s 6) . The 2002 Act s 89(1) does not prevent the bringing of an appeal on any or all of the grounds referred to in s 84(1)(b), (c) and (g): s 89(2). There is no right to elect either an in-country or out-of-country right of appeal: see *R (on the application of Saleh) v Secretary of State for the Home Department* [2008] All ER (D) 15 (Dec).

9 Ie under 2002 Act s 82(1).

10 *Ibid* s 92(1). The appeal must be against an immigration decision of a kind specified in s 82(2)(c), (d), (e), (f), (ha) and (j): s 92(2) (amended by Immigration, Asylum and Nationality Act 2006 s 47(7)).

11 2002 Act s 92(3) (s 92(3)-(3D) (substituted by 2004 Act s 28)).

12 2002 Act s 92(3A). The other circumstances are (1) the refusal of leave to enter is a deemed refusal under the Immigration Act 1971 Sch 2 para 2A(9) resulting from cancellation of leave to enter by an immigration officer under Sch 2 para 2A(8) and on the grounds specified in Sch 2 para 2A(2A) (see PARA 143) (2002 Act s 92(3B)); or (2) the refusal of leave to enter specifies that the grounds for refusal are that the leave is sought for a purpose other than that specified in the entry clearance (s 92(3C)).

13 Ie within the meaning of the British Nationality Act 1981: see PARAS 8-10.

14 2002 Act s 92(3D).

15 *Ibid* s 92(4).

16 Ie under *ibid* s 82(1).

17 Ie in reliance on *ibid* s 92(4)(a). See *R (on the application of BA (Nigeria)) v Secretary of State for the Home Department; R (on the application of PE) (Cameroon)) v Secretary of State for the Home Department* [2009] UKSC 7, [2010] 2 All ER 95, [2009] 3 WLR 1253 (second human rights or asylum claim which was not certified under s 94 or excluded under s 96 may be pursued in-country whether or not it was accepted as a fresh claim).

18 2002 Act s 94(1), (2) (s 94(2) amended by 2004 Act s 27(3)). A person may not bring an appeal against an immigration decision of a kind specified in the 2002 Act s 82(c), (d), (e) or (ha) in reliance on s 92(2) if the Secretary of State certifies that the claim or claims mentioned in s 94(1) is or are clearly unfounded: s 94(1A) (added by 2004 Act s 27(2); amended by Immigration, Asylum and Nationality Act 2006 s 47(8)). The Secretary of State must appoint a person to monitor the use of the powers under the 2002 Act s 94(2): s 111(1). The person appointed must make a report to the Secretary of State once in each calendar year, and on such occasions as the Secretary of State may request: s 111(2). Where the Secretary of State receives such a report he must lay a copy before Parliament as soon as is reasonably practicable: s 111(3). For further provision in relation to the person appointed, see s 111(4)-(6). See *R (on the application of YH) v Secretary of State for the Home Department* [2010] EWCA Civ 116, [2010] All ER (D) 280 (Feb).

19 The specified states are the Republic of Albania, Bolivia, Bosnia-Herzegovina, Brazil, Ecuador, India, Jamaica, Kosovo, Macedonia, Mauritius, the Republic of Moldova, Mongolia, Montenegro, Peru, Serbia, South Africa, South Korea, Ukraine and, in respect of men, Gambia, Ghana, Kenya, Liberia, Malawi, Mali, Nigeria, Sierra Leone: *ibid* s 94(4) (amended by 2004 Act s 27(4), Sch 4; SI 2003/970, SI 2003/1919, SI 2005/330, SI 2005/1016, SI 2005/3306, SI 2006/3215, SI 2006/3275, SI 2007/2221, SI 2010/561). As to the power of the Secretary of State to add states or parts of states to the list see the 2002 Act s 94(5), (5A)-(5D) (s 94(5A)-(5C) added by 2004 Act s 27(5); 2002 Act s 94(5D) added by SI 2007/3187). As to the power of the Secretary of State to omit states or parts of states from the list see the 2002 Act 94(6) (substituted by 2004 Act s 27(6)).

20 Ie under the 2002 Act s 94(2).

21 *Ibid* s 94(3). Section 94(3) does not apply in relation to an asylum claimant or human rights claimant who (1) is the subject of a certificate under the Extradition Act 2003 s 2 or 70; (2) is in custody pursuant to arrest under s 5; (3) is the subject of a provisional warrant under s 73; (4) is the subject of an authority to proceed under the Extradition Act 1989 s 7 (see EXTRADITION vol 17(2) (Reissue) PARA 1186) or an order under Sch 1 para 4(2) (see EXTRADITION vol 17(2) (Reissue) PARA 1210); or (5) is the subject of a provisional warrant under s 8 (see EXTRADITION vol 17(2) (Reissue) PARA 1188) or of a warrant under Sch 1 para 5(1)(b) (see EXTRADITION vol 17(2) (Reissue) PARA 1212): 2002 Act s 94(6A) (added by 2004 Act s 27(7)).

22 2002 Act s 94(7).

23 Ibid s 94(8).

24 Ie under ibid s 82(1).

25 Ibid s 94(9).

26 See ibid s 94A(1), (5) (s 94A added by SI 2007/3187).

27 2002 Act s 94A(2), (3). The Secretary of State must also certify the claim or claims under s 94(2) unless satisfied that the claim or claims is or are not clearly unfounded: s 94A(4).

28 Ie under ibid s 82(1).

29 Ibid s 95, which does not apply in a case to which s 94(9) applies. The ground set out in the TEXT is the ground in s 84(1)(g).

30 Ie under ibid s 82(1). In s 96, a reference to an appeal under s 82(1) includes a reference to an appeal under the Special Immigration Appeals Commission Act 1997 s 2 (substituted by 2002 Act Sch 7 para 20; and amended by Immigration, Asylum and Nationality Act 2006 Sch 1 para 14) which is or could be brought by reference to an appeal under the 2002 Act s 82(1): s 96(6).

31 'Notified' means notified in accordance with regulations under ibid s 105: s 96(4).

32 Ie under ibid s 82.

33 Ibid s 96(1) (s 96(1), (2) substituted by 2004 Act s 30(2)).

34 Ie under the 2002 Act s 82(1).

35 Ie under ibid s 120.

36 Ibid s 96(2). Section 96(1), (2) applies to prevent a person's right of appeal whether or not he has been outside the United Kingdom since an earlier right of appeal arose or since a requirement under s 120 was imposed: s 96(5) (amended by the 2004 Act s 30(3)). A certificate under the 2002 Act s 96(1) or (2) has no effect in relation to an appeal instituted before the certificate is issued: s 96(7) (added by the 2004 Act s 30(4)).

37 Ie under the 2002 Act s 82(1), s 83(2) or s 83A(2): s 97(1) (amended by Immigration, Asylum and Nationality Act 2006 Sch 1 para 6).

38 2002 Act s 97(1). See further NOTE 41. See *R (on the application of AM (Somalia)) v Secretary of State for the Home Department* [2009] EWCA Civ 114, [2009] All ER (D) 248 (Feb).

39 Ibid s 97(2). See further NOTE 41.

40 Ie under ibid s 82(1), s 83(2) or s 83A(2).

41 Ibid s 97(3) (amended by 2006 Act Sch 1 para 6).

The 2002 Act s 97A applies where the Secretary of State certifies that the decision to make a deportation order in respect of a person was taken on the grounds that his removal from the United Kingdom would be in the interests of national security: s 97A(1) (added by Immigration, Asylum and Nationality Act 2006 s 7(1)). Where the 2002 Act s 97A applies (1) s 79 does not apply, (2) the Secretary of State is to be taken to have certified the decision to make the deportation order under s 97, and (3) for the purposes of the Special Immigration Appeals Commission Act 1997 s 2(5) (appeals from within United Kingdom) it is to be assumed that the 2002 Act s 92 (a) would not apply to an appeal against the decision to make the deportation order by virtue of s 92(2)-(3D), (b) would not apply to an appeal against that decision by virtue of s 92(4)(a) in respect of an asylum claim, and (c) would be capable of applying to an appeal against that decision by virtue of s 92(4)(a) in respect of a human rights claim unless the Secretary of State certifies that the removal of the person from the United Kingdom would not breach the United Kingdom's obligations under the Human Rights Convention: s 97A(2) (as so added). A person in respect of whom a certificate is issued under head (c) may appeal to the Special Immigration Appeals Commission against the issue of the certificate; and for that purpose the Special Immigration Appeals Commission Act 1997 applies as to an appeal against an immigration decision to which the 2002 Act s 92 applies: s 97A(3). The Secretary of State may repeal s 97A by order: s 97A(4).

42 Ie under ibid s 82(1).

43 Ibid s 98(1), (2). This does not prevent the bringing of an appeal on either or both of the grounds referred to in s 84(1)(b) and (c) nor does it prevent the bringing of an appeal against an immigration decision of the kind referred to in s 82(2)(a) on the grounds referred to in s 84(1)(g): s 98(4), (5).

44 Ie under ibid s 96(1) or (2), 97 or 98.

45 Ibid s 99.

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/173C. Procedure.

173C. Procedure.

1. Review of Asylum and Immigration Tribunal's decision

A party to an appeal to the Tribunal¹ may apply to the appropriate court² for an order requiring the Tribunal to reconsider its decision on the appeal, on the grounds that the Tribunal made an error of law³. The appropriate court may make an order only if it thinks that the Tribunal may have made an error of law and only once in relation to an appeal⁴. A decision of the appropriate court is final⁵. Where such an application is made, it is determined by reference only to written submissions, and where rules of court permit, other written submissions⁶. Such an application cannot be made in relation to a decision of the Tribunal where its jurisdiction is exercised by three or more legally qualified members⁷.

1 Ie under Nationality, Immigration and Asylum Act 2002 s 82, 83 or 83A.

2 'Appropriate court' means the High Court: ibid s 103A(9) (s 103A added by Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 26(6)).

3 2002 Act s 103A(1) (amended by Immigration, Asylum and Nationality Act 2006 Sch 1 para 7). Such an application must be made (1) in the case of an application by the appellant made while he is in the United Kingdom, within the period of five days beginning with the date on which he is treated, in accordance with rules under the 2002 Act s 106, as receiving notice of the Tribunal's decision; (2) in the case of an application by the appellant made while he is outside the United Kingdom, within the period of 28 days beginning with the date on which he is treated, in accordance with rules under s 106, as receiving notice of the Tribunal's decision; and (3) in the case of an application brought by a party to the appeal other than the appellant, within the period of five days beginning with the date on which he is treated, in accordance with rules under section 106, as receiving notice of the Tribunal's decision: s 103A(3). Rules of court may specify days to be disregarded in applying such periods, and the appropriate court may permit an application under head (1) to be made outside the specified period where it thinks that the application could not reasonably practicably have been made within that period: s 103A(4).

As to procedure see CPR 54.28-CPR 54.36 (CPR 54.28-CPR 54.35 added by SI 2005/352; CPR 54.28 amended by SI 2005/3515; CPR 54.28A added by SI 2005/3515; CPR 54.28B added by SI 2006/1689; CPR 54.29 amended by SI 2005/3515; CPR 54.31 amended by SI 2006/1689; CPR 54.32 amended by SI 2005/3515; CPR 54.34 amended by SI 2005/3515; CPR 54.36 added by SI 2006/1689).

The Lord Chancellor may by order vary a period specified in head (1), (2) or (3) or in the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 Sch 2 para 30(5)(b): s 26(8). Such an order (a) may make

provision generally or only for specified cases or circumstances; (b) may make different provision for different cases or circumstances; (c) must be made by statutory instrument; and (d) is subject to annulment in pursuance of a resolution of either House of Parliament: s 26(9). Before making such an order, the Lord Chancellor must consult the Lord Chief Justice: s 26(10).

The Tribunal should accept the adjudicator's findings of fact unless the evidence does not support the findings made or the findings are clearly wrong: *P v Secretary of State for the Home Department*; *M v Secretary of State for the Home Department* [2004] EWCA Civ 1640, [2004] All ER (D) 123 (Dec); *R v Secretary of State for the Home Department* [2005] EWCA Civ 982, [2005] All ER (D) 384 (Jul). The Tribunal should not consider an issue missed by the adjudicator unless the facts are clear: *A (Iraq) v Secretary of State for the Home Department* [2005] EWCA Civ 1438, [2005] All ER (D) 22 (Dec). See also *LS (Uzbekistan) v Secretary of State for the Home Department* [2008] EWCA Civ 909, [2008] All ER (D) 413 (Jul).

As to transitional appeals see *R (on the application of Wani) v Secretary of State for the Home Department* [2005] EWHC 2815 (Admin), [2005] All ER (D) 279 (Dec). As to the procedure to be adopted where the Tribunal transfers the proceedings to an immigration judge for reconsideration of an appeal, see *Swash v Secretary of State for the Home Department* [2006] EWCA Civ 1093, [2007] 1 WLR 1264.

4 2002 Act s 103A(2). This does not include a procedural, ancillary, preliminary decision, or a decision following remittal under s 103B, 103C, or 103E: s 103A(7). The Tribunal does not have jurisdiction to consider an appeal on grounds in respect of which permission to appeal has not been granted: *Abbas v Secretary of State for the Home Department* [2005] All ER (D) 34 (Jul), CA.

5 2002 Act s 103A(6). However, judicial review may be available in exceptional circumstances: *R (on the application of AM (Cameroon)) v Asylum and Immigration Tribunal* (2007) Times, 11 April (affirmed on this point on appeal: [2008] EWCA Civ 100, [2008] 4 All ER 1159).

6 2002 Act s 103A(5).

7 Ibid s 103A(8).

2. Appeal from Asylum and Immigration Tribunal following reconsideration

Where an appeal to the Tribunal has been reconsidered¹, a party to the appeal may bring a further appeal on a point of law to the appropriate appellate court². Such an appeal may be brought only with the permission of the Tribunal, or if the Tribunal refuses permission, the appropriate appellate court³. The appropriate appellate court may

- 485 (1) affirm the Tribunal's decision⁴;
- 486 (2) make any decision which the Tribunal could have made;
- 487 (3) remit the case to the Tribunal;
- 488 (4) affirm a direction given by the Tribunal⁵;
- 489 (5) vary a direction given by the Tribunal⁶;
- 490 (6) give any direction which the Tribunal could have given⁷.

1 I.e. reconsideration following an order under the Nationality, Immigration and Asylum Act 2002 s 103A(1), or remittal to the Tribunal under s 103B, 103C, or 103E: s 103B(2) (s 103B added by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 26(6)).

2 2002 Act s 103B(1). 'Appropriate appellate court' means the Court of Appeal: 103B(5).

3 Ibid s 103B(3). The Court of Appeal does not, at the permission to appeal stage, have jurisdiction to remit a case to the Asylum and Immigration Tribunal to supplement its reasons: *Hatungimana v Secretary of State for the Home Department* [2006] All ER (D) 281 (Feb), CA.

4 'Decision' in the 2002 Act s 103B is the tribunal's determination of an appeal against the Home Secretary's decision, whether that determination is the one first made or, where a reconsideration has been ordered, the one reached on reconsideration: *HT (Cameroon) v Secretary of State for the Home Department* [2008] EWCA Civ 1508, [2009] All ER (D) 24 (Jan).

5 I.e. under the 2002 Act s 87.

6 I.e. under ibid s 87.

7 Ibid s 103B(4), referring to a direction under s 87.

3. Appeal from Asylum and Immigration Tribunal instead of reconsideration

On an application for an order for the Tribunal to reconsider its decision¹, where the appropriate court² thinks that the appeal raises a question of law of such importance that it should be decided by the appropriate appellate court³, it may refer the appeal to that court⁴. The appropriate appellate court may

- 491 (1) affirm the Tribunal's decision;
- 492 (2) make any decision which the Tribunal could have made;
- 493 (3) remit the case to the Tribunal;
- 494 (4) affirm a direction given by the Tribunal⁵;
- 495 (5) vary a direction given by the Tribunal⁶;
- 496 (6) give a direction which the Tribunal could have given⁷;
- 497 (7) restore the application⁸ to the appropriate court⁹.

1 Ibid under the Nationality, Immigration and Asylum Act 2002 s 103A: see PARA 173C.1.

2 For the meaning of 'appropriate court' see PARA 173C.1 NOTE 2.

3 For the meaning of 'appropriate appellate court' see PARA 173C.2 NOTE 2.

4 2002 Act s 103C(1) (s 103C added by Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 26(6)).

5 Ibid under the 2002 Act s 87: see PARA 173A.

6 Ibid under s 87.

7 Ibid under s 87.

8 Ibid under s 103A.

9 Ibid s 103C(2).

4. Reconsideration: legal aid

On an application of an appellant for an order for the Tribunal to reconsider its decision¹, the appropriate court² may order that the appellant's costs in respect of the application be paid out of the Community Legal Service Fund³. Where the Tribunal has decided an appeal following reconsideration pursuant to an order⁴, it may order that the appellant's costs be paid out of the Fund in respect of the application for reconsideration, and the reconsideration⁵. The Secretary of State may make regulations about the exercise of such powers⁶, and must consult such persons as he thinks appropriate⁷.

1 Ibid under the Nationality, Immigration and Asylum Act 2002 s 103A: see PARA 173C.1.

2 For the meaning of 'appropriate court' see PARA 173C.1 NOTE 2.

3 2002 Act s 103D(1) (s 103D added by Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 26(6)). As to the Community Legal Service Fund see LEGAL AID vol 65 (2008) PARA 37 et seq.

4 Ibid an order made under the 2002 Act s 103A(1) and on the application of the appellant.

5 Ibid s 103D(2), (3).

6 Ibid s 103D(4). Such regulations may, in particular, make provision (1) specifying or providing for the determination of the amount of payments; (2) about the persons to whom the payments are to be made; and

(3) restricting the exercise of the power, whether by referent to the prospects of success in respect of the appeal at the time when the application for reconsideration was made, the fact that a reference has been made under s 103C(1), the circumstances of the appellant, the nature of the appellant's legal representative, or otherwise; (4) conferring a function on the Legal Services Commission; (5) modifying a duty or power of the Legal Services Commission in respect of compliance with orders under s 103D(3); and (5); and (6) applying with or without modifications, modifying or disapplying a provision of, or of anything done under, an enactment relating to the funding of legal services: s 103D(5), (6). See the Community Legal Service (Asylum and Immigration Appeals) Regulations 2005, SI 2005/966 (amended by SI 2007/1317).

7 2002 Act s 103D(7).

5. Appeal from Asylum and Immigration Tribunal sitting as panel

Where a decision of the Tribunal on an appeal¹ where its jurisdiction is exercised by three or more legally qualified members², a party to the appeal may bring a further appeal on a point of law to the appropriate appellate court³. Such an appeal may be brought only with the permission of the Tribunal, or if the Tribunal refuses permission, the appropriate appellate court⁴. The appropriate appellate court may

- 498 (1) affirm the Tribunal's decision;
- 499 (2) make any decision which the Tribunal could have made;
- 500 (3) remit the case to the Tribunal;
- 501 (4) affirm a direction given by the Tribunal⁵;
- 502 (5) vary a direction given by the Tribunal⁶;

(6) give a direction which the Tribunal could have given⁷.

1 Such a decision does not include a reference to a procedural, ancillary or preliminary decision, or a decision following remittal under the Nationality, Immigration and Asylum Act 2002 s 103B or 103C: s 103E(7) (s 103E added by Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 26(6)).

2 2002 Act s 103E(1) (amended by Immigration, Asylum and Nationality Act 2006 Sch 1 para 8).

3 2002 Act s 103E(2). For the meaning of 'appropriate appellate court' see PARA 173C.2 NOTE 2.

4 Ibid s 103E(3).

5 Ie under ibid s 87.

6 Ie under ibid s 87.

7 Ibid s 103E(4), referring to a direction under s 87.

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/174. Appeals against exclusion from the United Kingdom.

174. Appeals against exclusion from the United Kingdom.

A person who is refused leave to enter the United Kingdom¹ under any provision of the Immigration Act 1971 may appeal to an adjudicator² against the decision that he requires leave, or against the refusal³. A person who, on an application duly made, is refused a certificate of entitlement⁴ or an entry clearance⁵ may appeal to an adjudicator against the refusal⁶.

If a person appeals on being refused leave to enter the United Kingdom and, before he appeals, directions have been given for his removal from the United Kingdom⁷, or before or after he appeals, the Secretary of State⁸ or an immigration officer⁹ serves on him notice that any directions which may be given for his removal as a result of the refusal will be for his removal to a country or one of several countries specified in the notice¹⁰, the appellant may object to the country to which he would be removed in accordance with the directions, or object to the country specified in the notice (or to one or more of those specified), and claim that he ought to be removed (if at all) to a different country specified by him¹¹.

A person is not entitled to appeal (1) on the ground that he has a right of abode in the United Kingdom, against a decision that he requires leave to enter the United Kingdom if he does not hold a United Kingdom passport¹² describing him as a British citizen¹³ or as a citizen of the United Kingdom and colonies¹⁴ having the right of abode¹⁵ in the United Kingdom, or a certificate of entitlement¹⁶; or (2) on the ground that he does not require leave to enter the United Kingdom, against a decision that he does require such leave if he is required¹⁷ to hold a specified document but does not do so¹⁸. A person is not entitled to appeal, except on human rights or race discrimination¹⁹ or asylum grounds²⁰: (a) against a refusal of leave to enter while he is in the United Kingdom unless, at the time of the refusal, he held a current entry clearance or was a person named in a current work permit²¹; (b) against a refusal of leave to enter, or against a refusal of an entry clearance, if the refusal is on the ground that he or any person whose dependant he is does not hold a relevant document²² required by the Immigration Rules, does not satisfy a requirement of the Immigration Rules as to age or nationality or citizenship²³, or seeks entry for a period exceeding that permitted by the Immigration Rules²⁴; or (c) against a refusal of leave to enter, or against a refusal of an entry clearance, if the Secretary of State certifies that directions have been given by him (and not by a person acting under his authority) for the appellant not to be given entry to the United Kingdom on the ground that his exclusion is conducive to the public good, or the leave to enter, or entry clearance, was refused in compliance with any such directions²⁵.

Where a person seeks to enter the United Kingdom: (i) as a visitor; (ii) in order to follow a course of study of not more than six months' duration for which he has been accepted; (iii) with the intention of studying but without having been accepted for any course of study; or (iv) as a dependant of a person within heads (i) to (iii) above, that person is not entitled to appeal against a refusal of an entry clearance unless he is a family visitor²⁶, and is not entitled to appeal against a refusal of leave to enter if he does not hold a current entry clearance at the time of the refusal²⁷. The Secretary of State must appoint a person to monitor, in such a manner as the Secretary of State may determine, such refusals of entry clearance in those cases where there is no right of appeal²⁸.

An appeal against a refusal of leave to enter the United Kingdom must be dismissed by the adjudicator if he is satisfied that the appellant was at the time of the refusal an illegal entrant²⁹.

An appeal against a refusal of an entry clearance must be dismissed by the adjudicator if he is satisfied that a deportation order was at the time of the refusal in force in respect of the appellant³⁰.

Where a person arrives in the United Kingdom with leave to enter which is in force and was given to him before his arrival, and an immigration officer cancels the leave, he is to be treated as a person refused leave to enter at a time when he had a current entry clearance³¹.

EEA nationals and members of their families may appeal against a refusal to admit them to the United Kingdom³².

- 1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.
- 2 'Adjudicator' means an adjudicator appointed under the Immigration and Asylum Act 1999 s 57 (see para 173 ante): s 167(1).
- 3 Ibid s 59(1).
- 4 For the meaning of 'certificate of entitlement' see para 85 note 13 ante.
- 5 As to entry clearance see para 96 ante.
- 6 Immigration and Asylum Act 1999 s 59(2).
- 7 Ie under the Immigration Act 1971 s 4, Sch 2 para 8 (as amended): see para 152 ante.
- 8 As to the Secretary of State see para 2 ante.
- 9 For the meaning of 'immigration officer' see para 86 note 12 ante.
- 10 Immigration and Asylum Act 1999 s 59(3).
- 11 Ibid s 59(4). If a person in the United Kingdom appeals under s 59 or s 69(1) (see para 180 post) on being refused leave to enter, any directions previously given by virtue of the refusal for his removal, or the removal of members of his family, from the United Kingdom, cease to have effect, except in so far as they have already been carried out, and no directions may be given while the appeal is pending: s 58, Sch 4 paras 10, 15. However, the provisions for detention (in the Immigration Act 1971 Sch 2 Pt I (as amended)) apply: Immigration and Asylum Act 1999 Sch 4 para 12. For these purposes an appeal is not to be regarded as pending where an appeal to the adjudicator is dismissed, unless immediately after the dismissal the appellant gives notice of appeal, or (where the adjudicator has power to grant leave to appeal and such leave is required) he applies for and obtains the leave of the adjudicator: Sch 4 para 14. As to appeal against removal to a particular country see para 178 post.
- 12 For the meaning of 'United Kingdom passport' see para 93 note 16 ante.
- 13 As to British citizens see paras 8, 23-43 ante.
- 14 As to citizenship of the United Kingdom and colonies see paras 16-21 ante.
- 15 As to the right of abode see paras 14, 85 ante. See also para 22 ante.
- 16 Immigration and Asylum Act 1999 s 60(1). The passport must be current: *Akewushola v Secretary of State for the Home Department* [2000] 2 All ER 148, [2000] 1 WLR 2295, [1999] Imm AR 594, CA.
- 17 Ie by the Immigration Rules or an order under the Immigration Act 1971 s 8(2) (as amended): see para 162 ante. As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).
- 18 Immigration and Asylum Act 1999 s 60(2).
- 19 See ibid s 65 (as amended); and para 179 post.
- 20 See ibid s 69(1): and para 180 post.
- 21 Ibid s 60(3).
- 22 Relevant documents are entry clearances, passports or other identity documents, and work permits: ibid s 60(8).
- 23 As to citizenship see paras 8, 23 et seq ante.
- 24 Immigration and Asylum Act 1999 s 60(7).
- 25 Ibid s 60(9). Such a person may however appeal to the Special Immigration Appeals Commission: see para 184 post.

As to the balance to be struck between a state's rights to control the entry of non-nationals whose exclusion is deemed conducive to the public good and those non-nationals' rights under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) (in this case, the right to freedom of expression under art 10), see *R (on the application of Farrakhan) v Secretary of State for the Home Department* [2002] EWCA Civ 606, [2002] 3 WLR 481. As to freedom of expression under the Convention see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 158.

26 'Family visitor' means a person who applies for entry clearance to enter the United Kingdom as a visitor, in order to visit: (1) his spouse, father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece or first cousin; (2) the father, mother, brother or sister of his spouse; (3) the spouse of his son or daughter; (4) his stepfather, stepmother, stepson, stepdaughter, stepbrother or stepsister; or (5) a person with whom he lived as a member of an unmarried couple for at least two of the three years before the day on which his application for entry clearance was made: *ibid* s 60(10); Immigration Appeals (Family Visitor) (No 2) Regulations 2000, SI 2000/2446, reg 2(2). 'First cousin' means, in relation to a person, the son or daughter of his uncle or aunt: reg 2(1). The Secretary of State may by regulations make provision requiring a family visitor appealing under the Immigration and Asylum Act 1999 s 59 to pay such fee as may be fixed by the regulations, for such an appeal not to be entertained unless the required fee has been paid by the appellant and for the repayment of any such fee if the appeal is successful: Immigration and Asylum Act 1999 s 60(6). At the date at which this volume states the law no such fee is payable: see the Immigration Appeals (Family Visitor) Regulations 2002, SI 2002/1147, reg 3. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

27 Immigration and Asylum Act 1999 s 60(5).

28 *Ibid* s 23(1). The Secretary of State may not appoint a member of his staff to act as monitor: s 23(2). The monitor must make an annual report on the discharge of his functions to the Secretary of State and the Secretary of State must lay a copy of the report before each House of Parliament: s 23(3), (4). The Secretary of State may pay to the monitor such fees and allowances as he may determine: s 23(5).

29 *Ibid* Sch 4 para 24(1). For the meaning of 'illegal entrant' see para 151 ante.

30 *Ibid* Sch 4 para 24(2). As to deportation see para 160 et seq ante.

31 Immigration Act 1971 Sch 2 para 2A(9) (added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 57).

32 See the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 29 (as amended); and para 183 post. As to EEA nationals see para 225 et seq post.

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

174 Appeals against exclusion from the United Kingdom

NOTE 3--See *R (on the application of Loutchansky) v First Secretary of State* [2005] All ER (D) 04 (Jul).

NOTE 27--See now the Nationality, Immigration and Asylum Act 2002 ss 90, 91.

TEXT AND NOTE 28--The Secretary of State must appoint a person to monitor, in such manner as the Secretary of State may determine, refusals of entry clearance in cases where, as a result of the Nationality, Immigration and Asylum Act 2002 s 88A (entry clearance: non-family visitors and students), an appeal under s 82(1) may be brought only on the grounds referred to in s 84(1)(b) and (c) (racial discrimination and human rights): 1999 Act s 23(1) (substituted by Immigration, Asylum and Nationality Act 2006 s 4(2)).

NOTE 31--1971 Act Sch 2 para 2A(9) amended: 2002 Act Sch 7 para 2.

NOTE 32--SI 2000/2326 reg 29 now Immigration (European Economic Area) Regulations 2006, SI 2006/1003, reg 26.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/175. Appeals against variation or refusal to vary leave to enter or remain.

175. Appeals against variation or refusal to vary leave to enter or remain.

A person may appeal against a decision to vary, or to refuse to vary, any limited leave to enter or remain in the United Kingdom¹ which he has if, as a result of that decision, he may be required to leave the United Kingdom within 28 days of being notified of the decision².

However, a person, or a person whose dependant he is, is not entitled to appeal against a refusal to vary leave if:

- 503 (1) the refusal is on the ground that: (a) a relevant document³ which is required by the Immigration Rules⁴ has not been issued; (b) the person does not satisfy a requirement of the Immigration Rules as to age or nationality or citizenship; (c) the variation would result in the duration of a person's leave exceeding that permitted by the Immigration Rules; or (d) any fee required by or under any enactment has not been paid⁵; or
- 504 (2) the Secretary of State⁶ has certified that the appellant's departure from the United Kingdom would be conducive to the public good as being in the interests of either national security, or the relations between the United Kingdom and any other country, or for other reasons of a political nature; or that the decision questioned by the appeal was taken on that ground by the Secretary of State (and not by a person acting under his authority)⁷.

A person is not entitled to appeal against a variation made by statutory instrument, or against a refusal of the Secretary of State to make a statutory instrument⁸.

A person may appeal to the Special Immigration Appeals Commission⁹ against any decision which he is entitled¹⁰ to appeal against but for a public interest provision¹¹.

The right of appeal against a variation or refusal to vary leave is only available where there is an existing leave at the time of the decision¹². If a person with limited leave to enter or remain applies before the expiry of the leave for variation and when it expires no decision has been taken, the leave is to be treated as continuing until the end of the period allowed¹³ for appealing the decision¹⁴. A variation is not to take effect while an appeal against the variation is pending¹⁵.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Immigration and Asylum Act 1999 s 61. There is no longer a right of appeal against conditions attached to leave or to the grant of a lesser leave than that sought, since the repeal of the Immigration Act 1971 s 14 by the Immigration and Asylum Act 1999 s 169(3), Sch 16. A pending appeal under s 61 is to be treated as abandoned if a deportation order is made against the appellant: s 58(10). As to deportation see para 160 et seq ante.

3 Relevant documents are entry clearances, passports or other identity documents, and work permits or equivalent documents issued after entry: *ibid* s 62(2).

- 4 As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).
- 5 Immigration and Asylum Act 1999 s 62(1).
- 6 As to the Secretary of State see para 2 ante.
- 7 Immigration and Asylum Act 1999 s 62(4).
- 8 Ibid s 62(5).
- 9 As to appeals to the Commission see further para 184 post.
- 10 Ie under the Immigration and Asylum Act 1999 Pt IV (ss 56-81) (as amended) other than s 59(2).
- 11 See the Special Immigration Appeals Commission Act 1997 s 2(1); and para 184 post.
- 12 *R v Immigration Appeal Tribunal, ex p Subramaniam* [1977] QB 190, [1976] 3 All ER 604, [1976] 3 WLR 630, CA; *Suthendran v Immigration Appeal Tribunal* [1977] AC 359, [1976] 3 All ER 611, [1976] 3 WLR 725, HL. A person whose limited leave, as extended by the statutory provision, has expired, has no right of appeal: *Wa-Selo v Secretary of State for the Home Department* [1990] Imm AR 76, CA; *Akhtar v Secretary of State for the Home Department* [1991] Imm AR 232, CA.
- 13 Ie under rules made under the Immigration and Asylum Act 1999 s 58, Sch 4 para 3. The current procedure rules provide a time limit of ten days for appealing within the United Kingdom, extendable if the Secretary of State or the adjudicator is satisfied that the circumstances make it just to do so: see the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, rr 6(1), 7.
- 14 Immigration Act 1971 s 3C(1), (2) (s 3C added by the Immigration and Asylum Act 1999 s 3). An application for variation of leave to enter or remain in the United Kingdom may not be made while that leave is treated as continuing as a result of the Immigration Act 1971 s 3C (as added), but this does not prevent a variation of the application made under s 3C(1) (as added): s 3C(3), (4) (as so added). The conditions attached to an original grant of leave continue to be attached to leave, since it acts as an extension of leave rather than a new grant of leave: *Shaukat Ali v Chief Adjudication Officer* (1985) Times, 24 December, CA; *R v Secretary of State for the Home Department, ex p Lapinid* [1984] 3 All ER 257, [1984] 1 WLR 1269, [1984] Imm AR 101, CA; *Muhammad Idrish v Secretary of State for the Home Department* [1985] Imm AR 155 at 167; *Rajendran v Secretary of State for the Home Department* [1989] Imm AR 512.
- If an appeal is lodged during the period of statutory leave under the Immigration Act 1971 s 3C (as added), that leave, and any conditions attached to it, continues until the appeal is finally determined, withdrawn or abandoned: see the Immigration and Asylum Act 1999 s 58, Sch 4 para 17. As to final determination see para 188 post; as to withdrawal see para 183 note 12 post.
- 15 Ibid Sch 4 para 16.

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

175 Appeals against variation or refusal to vary leave to enter or remain

TEXT AND NOTE 14--Replaced. Now, if a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State for variation of the leave, the application for variation is made before the leave expires, and the leave expires without the application for variation having been decided, then the leave is extended during any period when the application for variation is neither decided nor withdrawn, an appeal under the Nationality, Asylum and Immigration Act 2002 s 82(1) could be brought, while the appellant is in the United Kingdom against the decision on the application for variation (ignoring any possibility of an appeal out of time with

permission), or an appeal under s 82(1) against that decision, brought while the appellant is in the United Kingdom, is pending (within the meaning of s 104: 1971 Act s 3C(1), (2) (s 3C substituted by the 2002 Act s 118; 1971 Act s 3C(2) amended by Immigration, Asylum and Nationality Act 2006 s 11(2), (3)). Leave which has been so extended lapses if the applicant leaves the United Kingdom: 1971 Act s 3C(3) (s 3C as so substituted). A person may not make an application for variation of his leave to enter or remain in the United Kingdom while that leave is so extended but this does not prevent the variation of the application mentioned in s 3C(1)(a): s 3C(4), (5) (s 3C as so substituted). The Secretary of State may make regulations determining when an application is decided for the purposes of s 3C; and the regulations (1) may make provision by reference to receipt of a notice, (2) may provide for a notice to be treated as having been received in specified circumstances, (3) may make different provision for different purposes or circumstances, (4) must be made by statutory instrument, and (5) are subject to annulment in pursuance of a resolution of either House of Parliament: 1971 Act s 3C(6) (s 3C(6) now as substituted by 2006 Act s 11(4)).

The following provisions apply if a person's leave to enter or remain in the United Kingdom (a) is varied with the result that he has no leave to enter or remain in the United Kingdom, or (b) is revoked: 1971 Act s 3D(1) (s 3D added by the 2006 Act s 11(5)). The person's leave is extended by virtue of the 1971 Act s 3D during any period when (i) an appeal under the 2002 Act s 82(1) could be brought, while the person is in the United Kingdom, against the variation or revocation (ignoring any possibility of an appeal out of time with permission), or (ii) an appeal under s 82 against the variation or revocation, brought while the appellant is in the United Kingdom, is pending (within the meaning of the 2002 Act s 104): 1971 Act s 3D(2). A person's leave as extended by virtue of s 3D lapses if he leaves the United Kingdom: s 3D(3). A person may not make an application for variation of his leave to enter or remain in the United Kingdom while that leave is extended by virtue of s 3D: s 3D(4).

Where a person's leave to enter or remain in the United Kingdom is extended by the Immigration Act 1971 s 3C(2)(b) or 3D(2)(a), the Secretary of State may decide that the person is to be removed from the United Kingdom, in accordance with directions to be given by an immigration officer if and when the leave ends: Immigration, Asylum and Nationality Act 2006 s 47(1). Directions under s 47 may impose any requirements of a kind prescribed for the purpose of the Immigration and Asylum Act 1999 s 10 (removal of persons unlawfully in United Kingdom): 2006 Act s 47(2). In relation to directions under s 47, the Immigration Act 1971 Sch 2 paras 10, 11, 16-18, 21 and 22-24 (administrative provisions as to control of entry) apply as they apply in relation to directions under Sch 2 para 8: 2006 Act s 47(3). The costs of complying with a direction given under s 47 (so far as reasonably incurred) must be met by the Secretary of State: s 47(4). A person is not liable to removal from the United Kingdom under s 47 at a time when the Immigration Act 1971 s 7(1)(b) (Commonwealth and Irish citizens ordinarily resident in United Kingdom) would prevent a decision to deport him: 2006 Act s 47(5).

For the purpose of the 1971 Act s 3C an application for variation of leave is decided (1) when notice of the decision has been given in accordance with regulations made under the 2002 Act s 105; or (2) where no such notice is required, when notice of the decision has been given in accordance with the 1971 Act s 4(1): Immigration (Continuation of Leave) (Notices) Regulations 2006, SI 2006/2170, art 2.

176. Appeal against a decision to make or refusal to revoke a deportation order.

A person may appeal to an adjudicator¹ against: (1) a decision of the Secretary of State² to make a deportation order against him³ as a result of his liability to deportation⁴; or (2) a refusal by the Secretary of State to revoke a deportation order made against him⁵. A deportation order is not to be made against a person⁶ while an appeal may be brought against the decision to make it⁷.

A person is not entitled to appeal under heads (1) and (2) above against a decision to make a deportation order against him if the ground of the decision was that his deportation is conducive to the public good as being in the interests of national security or of the relations between the United Kingdom⁸ and any other country or for other reasons of a political nature⁹. Nor is he entitled to appeal against a refusal to revoke a deportation order if: (a) the Secretary of State has certified that the appellant's exclusion from the United Kingdom would be conducive to the public good; or (b) revocation was refused on that ground by the Secretary of State (and not by a person acting under his authority)¹⁰.

Where an appeal is made against a decision to make a deportation order against a person as belonging to the family of another person, or against a refusal to revoke a deportation order so made, the appellant is not allowed, for the purpose of showing that he does not or did not belong to another person's family, to dispute any statement made with a view to obtaining leave for the appellant to enter or remain in the United Kingdom (including any statement made to obtain an entry clearance)¹¹. The appellant is allowed to dispute such a statement if he shows that the statement was not so made by him or by any person acting with his authority, and that, when he took the benefit of the leave, he did not know any such statement had been made to obtain it or, if he did know, he was under the age of 18¹².

If a person who has brought an appeal¹³ has been notified of the Secretary of State's decision either to make a deportation order against him, or to refuse to revoke a deportation order made against him, and is not entitled¹⁴ to appeal against either decision¹⁵, and appeals against either decision to the Special Immigration Appeals Commission¹⁶, any appeal is transferred to, and must be heard by, the Commission¹⁷.

A person may not appeal against a refusal to revoke a deportation order so long as he is in the United Kingdom¹⁸, unless his appeal is on human rights, race discrimination or asylum grounds¹⁹.

There is no provision in the Immigration Acts²⁰ for an appeal against a recommendation for deportation by a court, or against a deportation order made by the Secretary of State following such a recommendation²¹.

1 For the meaning of 'adjudicator' see para 174 note 2 ante.

2 As to the Secretary of State see para 2 ante.

3 Ie under the Immigration Act 1971 s 5(1): see para 160 ante. As to deportation see para 160 et seq ante.

4 Ie under ibid s 3(5) (as substituted): see para 160 ante.

5 Immigration and Asylum Act 1999 s 63(1). Where the appeal is against a decision that the deportation is conducive to the public good and is based upon the appellant's criminal conviction, the Tribunal may properly receive in evidence the summing-up of the judge in the criminal trial: *Ayo v Immigration Appeal Tribunal* [1990] Imm AR 461, CA.

If a person appeals, and before or after he appeals the Secretary of State serves on him notice that any directions which may be given for his removal as a result of the deportation order will be for his removal to a country or one of several countries specified in the notice, the appellant may object to the country specified in the notice (or to one or more of those specified), and claim that he ought to be removed (if at all) (see *R v Immigration Appeal Tribunal, ex p Muruganandarajah* [1986] Imm AR 382, CA), to a different country specified

by him (see the Immigration and Asylum Act 1999 s 63(3), (4)), and if either he does not so object or he does object but his objection is not sustained, he will not be able to do so on a subsequent appeal against the removal directions (see s 68(2)).

On an appeal against a decision to deport, the Immigration Act 1971 s 4(2), Sch 2 paras 29-33 (as amended) (bail pending appeal and ancillary matters) apply: see s 5(5), Sch 3 para 3 (as amended); and para 214 post. As to liability for deportation see para 160 ante. As to detention and control pending deportation see para 166 ante.

6 See note 3 supra.

7 Immigration and Asylum Act 1999 s 63(2), Sch 4 para 18. In calculating the period of eight weeks for making a deportation order against a person as belonging to the family of another person (see para 161 ante), the period during which an appeal against the decision to make the order is pending is to be disregarded: Sch 4 para 19.

8 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

9 Immigration and Asylum Act 1999 s 64(1).

10 Ibid s 64(2).

11 Ibid s 64(4), (5). As to entry clearance see para 96 ante.

12 Ibid s 64(6).

13 Ie under ibid Pt IV (ss 56-81) (as amended).

14 Ie by virtue of ibid s 64(1), (2).

15 Ie under ibid s 63.

16 See paras 173 ante, 189, 194 post.

17 Immigration and Asylum Act 1999 s 78(1)-(3).

18 This applies whether he is in the United Kingdom because of a failure to comply with the requirement to leave or because he has contravened the prohibition on entering: ibid s 64(3). As to proof of an order of the Secretary of State see para 86 note 15 ante.

19 Ie by virtue of ibid s 65 (as amended), s 69(4): see paras 179-180 post.

20 For the meaning of 'the Immigration Acts' see para 83 ante.

21 However, such a recommendation can be appealed through the criminal appeals system: see the Immigration Act 1971 s 6(5); the Criminal Appeal Act 1968 ss 9 (as amended), 10 (as amended), 11(1) (as amended), 11(1A) (as added) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 1837 et seq); and the Magistrates' Courts Act 1980 s 108 (as amended) (see MAGISTRATES vol 29(2) (Reissue) para 883). A deportation order cannot be made on the recommendation of a court so long as an appeal or further appeal against the conviction or the recommendation is pending: Immigration Act 1971 s 6(6). See also para 160 ante.

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

177. Appeal against the validity of directions for removal.

Where directions are given for a person's removal from the United Kingdom¹: (1) on the ground that he is an illegal entrant²; (2) on the ground that he is unlawfully in the United Kingdom as an overstayer, a person in breach of conditions or having obtained leave to remain by deception³; or (3) under special powers⁴ in relation to members of the crew of a ship or aircraft or persons coming to the United Kingdom to join a ship or aircraft as a member of the crew⁵, then that person may appeal to an adjudicator against the directions on the ground that on the facts of his case there was in law no power to give them on the ground on which they were given⁶. The person is not entitled to appeal while he is in the United Kingdom unless he is alleging race discrimination or a breach of his human rights⁷ or he has made a claim for asylum⁸.

If a person appeals against directions given by virtue of a deportation order, he may not dispute the original validity of that order⁹. An appeal against directions under the special powers in relation to crew members must be dismissed by the adjudicator, even though the ground of appeal is made out, if he is satisfied that there was power to give the same directions on the ground that the appellant was an illegal entrant¹⁰.

A person may appeal to the Special Immigration Appeals Commission¹¹ against any decision which he would be entitled¹² to appeal against but for a public interest provision¹³.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Ie under the Immigration Act 1971 s 4, Sch 2 para 9 (as amended): see para 186 post.

3 Ie under the Immigration and Asylum Act 1999 s 10: see para 154 ante. See also the Immigration (Removal Directions) Regulations 2000, SI 2000/2243. If a person in the United Kingdom appeals against removal directions, those directions except in so far as they have already been carried out, have no effect while the appeal is pending: see the Immigration and Asylum Act 1999 s 58, Sch 4 para 11. But the provisions relating to detention in the Immigration Act 1971 Sch 2 (as amended) apply: Immigration and Asylum Act 1999 Sch 4 para 12. For these purposes, except in relation to asylum appeals, an appeal which has been dismissed by the adjudicator only remains pending if immediately it is dismissed, notice of appeal is given or (where applicable) leave to appeal is obtained from the adjudicator: Sch 4 para 14. For the meaning of 'adjudicator' see para 174 note 2 ante.

4 Ie special powers conferred by the Immigration Act 1971 Sch 2 paras 13 (as amended), 14: see para 153 ante.

5 Immigration and Asylum Act 1999 s 66(1).

6 Ibid s 66(2).

7 Ie under ibid s 65 (as amended): see para 179 post.

8 Ibid s 66(3). As to claims for asylum see s 69(5); and para 180 post.

9 Ibid s 66(4).

10 Ibid Sch 4 para 24(3).

11 As to appeals to the Commission see further paras 184, 189, 194 post.

12 Ie by virtue of the Immigration and Asylum Act 1999 Pt IV (ss 56-81) (as amended).

13 See the Special Immigration Appeals Commission Act 1997 s 2(1); and para 184 post.

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/178. Appeal against removal to a particular country or territory.

178. Appeal against removal to a particular country or territory.

If directions are given¹ for a person's removal from the United Kingdom²: (1) on his being refused leave to enter; (2) on a deportation order being made against him; or (3) on his having entered the United Kingdom in breach of a deportation order³, that person may appeal to an adjudicator⁴ against the directions on the ground that he ought to be removed (if at all)⁵ to a different country specified by him⁶.

A person may not appeal against directions given on his being refused leave to enter the United Kingdom unless he is also appealing against the decision that he requires leave to enter⁷, or he was refused leave at a time when he held a current entry clearance⁸ or was a person named in a current work permit⁹.

If a person is entitled to object to a country on an appeal against refusal of leave to enter or deportation¹⁰ and he does not object to it on that appeal, or his objection to it on that appeal is not sustained, then he is not entitled to appeal against any directions subsequently given as a result of the refusal or order in question, if their effect will be his removal to that country¹¹.

A person who claims that he ought to be removed to a country other than one he has objected to must produce evidence, if he is not a national or citizen of that other country, that that country will admit him¹².

1 le under the Immigration Act 1971 Sch 2, 3 (both as amended): see para 83 et seq ante.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 Immigration and Asylum Act 1999 s 67(1). As to deportation see para 160 et seq ante.

4 For the meaning of 'adjudicator' see para 174 note 2 ante.

5 See *R v Immigration Appeal Tribunal, ex p Muruganandarajah* [1986] Imm AR 382, CA.

6 Immigration and Asylum Act 1999 s 67(2). Such appeals are limited to issues of alternative destinations: *R v Immigration Appeal Tribunal and Secretary of State for the Home Department, ex p Alghali* [1986] Imm AR 376; *R v Immigration Appeal Tribunal, ex p Muruganandarajah* [1986] Imm AR 382, CA. The appellant must specify in his notice of appeal another country that will receive him: *Agyekum v Secretary of State for the Home Department* [1987] Imm AR 23, IAT; *R v Immigration Appeal Tribunal, ex p Kandemir* [1986] Imm AR 510, CA; *Bouanimba v Secretary of State for the Home Department* [1986] Imm AR 343. If no alternative destination is specified, there is no valid appeal: *R v An Adjudicator, ex p Umeloh* [1991] Imm AR 602. On an appeal under the Immigration and Asylum Act 1999 s 67 an appellant cannot raise the issue of a procedural defect in the decision to make a deportation order: see *Agyekum v Secretary of State for the Home Department* supra (allegedly improper service). Directions for removal are suspended while an appeal is pending: see para 177 note 3 ante.

7 See the Immigration and Asylum Act 1999 s 59(1); and para 174 ante.

8 As to entry clearance see para 96 ante.

9 Immigration and Asylum Act 1999 s 68(1).

10 le under ibid s 59 (see para 174 ante) or s 63 (see para 176 ante).

11 Ibid s 68(2).

12 Ibid s 68(3).

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/179. Appeal against a racially discriminatory decision or one in breach of human rights.

179. Appeal against a racially discriminatory decision or one in breach of human rights.

A person who alleges that an authority¹ has, in taking any decision under the Immigration Acts² relating to that person's entitlement to enter or remain in the United Kingdom³, racially discriminated against him⁴ or acted in breach of his human rights⁵ may appeal to an adjudicator⁶ against that decision unless he has grounds for bringing an appeal against the decision under the Special Immigration Appeals Commission Act 1997⁷.

If, in proceedings before an adjudicator or the Immigration Appeal Tribunal⁸ on an appeal, a question arises as to whether an authority has, in taking any decision under the Immigration Acts relating to the appellant's entitlement to enter or remain in the United Kingdom, racially discriminated against him or acted in breach of the appellant's human rights⁹, the adjudicator, or the Tribunal, has jurisdiction to consider the question¹⁰. If the adjudicator, or the Tribunal, decides that the authority concerned racially discriminated against the appellant or acted in breach of the appellant's human rights, the appeal may be allowed on the ground in question¹¹.

A person is not to be required to leave, or be removed from the United Kingdom, if an appeal against a racially discriminatory decision or one in breach of human rights is pending against the decision on which that requirement or removal would otherwise be based¹².

If, on an appeal by a person who claims that it would be contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) for him to be removed from, or required to leave the United Kingdom, the Secretary of State certifies that:

- 505 (1) on his arrival in the United Kingdom the appellant was required by an immigration officer to produce a valid passport and he failed to do so without giving a reasonable explanation, or produced an invalid passport and failed to inform the officer that it was not valid¹³;
- 506 (2) the claim does not disclose a right under the Convention or discloses such a right but the claim is manifestly unfounded¹⁴;
- 507 (3) the claim is made at any time after the appellant has been refused leave to enter, recommended for deportation, notified of a decision to make a deportation

- order as a result of his liability to deportation, or of his liability to removal as an illegal entrant¹⁵;
- 508 (4) the claim is manifestly fraudulent, or any of the evidence adduced in its support is manifestly false¹⁶; or
- 509 (5) the claim is frivolous or vexatious¹⁷,

and the evidence adduced in support of the claim does not establish a reasonable likelihood that the appellant has been tortured in the country to which he is to be sent¹⁸, and the adjudicator agrees with the opinion expressed in the Secretary of State's certificate, no right of appeal to the Immigration Appeal Tribunal is conferred¹⁹.

If the Secretary of State certifies that the person's claim that he has been racially discriminated against is manifestly unfounded, and on appeal the adjudicator agrees with the Secretary of State, there is no right of appeal to the Tribunal²⁰.

No appeal may be brought by any person in respect of a decision if that decision is already the subject of an appeal brought by him under the Special Immigration Appeals Commission Act 1997, and the appeal under that Act has not been determined²¹.

1 'Authority' means the Secretary of State, an immigration officer, or a person responsible for the grant or refusal of entry clearance: Immigration and Asylum Act 1999 s 65(7). As to the Secretary of State see para 2 ante. For the meaning of 'immigration officer' see para 86 note 12 ante. As to entry clearance see para 96 ante.

2 For the meaning of 'the Immigration Acts' see para 83 ante.

3 The phrase 'relating to that person's entitlement to enter or remain in the United Kingdom' should be widely interpreted to include directions for removal from the United Kingdom: see *R (on the application of Kariharan) v Secretary of State for the Home Department*, *R (on the application of Kumarakuruparan) v Secretary of State for the Home Department* [2002] EWCA Civ 1102. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

4 An authority racially discriminates against a person if he acts, or fails to act, in relation to that other person in a way which is unlawful by virtue of the Race Relations Act 1976 s 19B (as added): Immigration and Asylum Act 1999 s 65(2)(a) (added by the Race Relations (Amendment) Act 2000 s 6(4)). The Race Relations Act 1976 s 19B (as added) makes it unlawful for a public authority in carrying out its functions to do any act which constitutes discrimination: see DISCRIMINATION vol 13 (2007 Reissue) para 470. However, it is not unlawful for a relevant person to discriminate against another person on grounds of nationality, or ethnic or national origins, in carrying out immigration and nationality functions: see s 19D(1) (as added); and DISCRIMINATION vol 13 (2007 Reissue) para 470. 'Relevant person' means a minister acting personally; or any other person acting in accordance with a relevant authorisation: see s 19D(2) (as added); and DISCRIMINATION vol 13 (2007 Reissue) para 470. See further paras 86 note 23, 93 note 40 ante.

5 An authority acts in breach of a person's human rights if he acts, or fails to act, in relation to that other person in a way which is made unlawful by the Human Rights Act 1998 s 6(1) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS: Immigration and Asylum Act 1999 s 65(2)(b) (amended by the Race Relations (Amendment) Act 2000 s 6(4)). Most immigration appeals concern the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 3 (removal would expose applicant to torture or to inhuman or degrading treatment or punishment) (see *Soering v United Kingdom* (1989) 11 EHRR 439 (extradition to death row in USA violated art 3); *Cruz Varas v Sweden* (1991) 14 EHRR 1 (test in *Soering v United Kingdom* supra applies a fortiori to expulsion of aliens); *Chahal v United Kingdom* (1996) 23 EHRR 413 (obligation not to expel to torture or inhuman treatment is absolute and cannot be overridden by national security considerations); *Hilal v United Kingdom* (2001) 33 EHRR 2 (expulsion to Tanzania violated art 3); *D v United Kingdom* (1997) 24 EHRR 423 (expulsion resulting in withdrawal of medical care for terminally ill AIDS patient violated art 3)); or the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 8 (removal would constitute disproportionate interference with right of respect for family and/or private life) (see *Abdulaziz v United Kingdom* (1985) 7 EHRR 471; *Boutif v Switzerland* [2001] 2 FLR 1228, ECtHR (spouses); *Berrehab v Netherlands* (1988) 11 EHRR 322; *Ciliz v Netherlands* [2000] 2 FLR 469, ECtHR (non-custodial parents and children); *Moustaquim v Belgium* (1991) 13 EHRR 802; *Beldjoudi v France* (1992) 14 EHRR 801; *Nasri v France* (1995) 21 EHRR 458 (sum total of connections of young adults with country of residence)).

Any article of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) might be engaged by a decision to remove: *Secretary of State for the Home Department v Kacaj* [2002] Imm AR 213, [2001] INLR 354, IAT; *Nhundu v Secretary of State for the Home Department* (1 June 2001, unreported), IAT.

As to interference with qualified rights such as the right to private life see *Secretary of State for the Home Department v Z*, *A v Secretary of State for the Home Department*, *R (on the application of M) v Secretary of State for the Home Department* [2001] EWCA Civ 952.

6 For the meaning of 'adjudicator' see para 174 note 2 ante.

7 Immigration and Asylum Act 1999 s 65(1) (amended by the Race Relations (Amendment) Act 2000 s 6(3)). Written notice of the decision and the right of appeal, normally required by the Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246, reg 4(1), is not required for a decision otherwise unappealable, by reason only of the fact that the decision could be appealed under the Immigration and Asylum Act 1999 s 65 or the corresponding provision of the Special Immigration Appeals Commission Act 1997: Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246, reg 4(4) (amended by SI 2001/868). But where an allegation of racial discrimination or breach of human rights is made, notice must be given: Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246, reg 4(4) (as so amended). As to appeals under the Special Immigration Appeals Commission Act 1997 see paras 184, 189, 194 post.

8 As to the Immigration Appeal Tribunal see para 173 ante.

9 Immigration and Asylum Act 1999 s 65(3) (amended by the Race Relations (Amendment) Act 2000 s 9(1), Sch 2 para 32).

10 Immigration and Asylum Act 1999 s 65(4). The appellate authority is not obliged to consider human rights issues where these are not raised on appeal: *Xhezo v Secretary of State for the Home Department* (12 July 2001, unreported), IAT. The correct standard of proof in a case involving removal is whether there is a real risk that removal will result in a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 3 or any other article: *Secretary of State for the Home Department v Kacaj* [2002] Imm AR 213, [2001] INLR 354, IAT; approved in *R (on the application of Dhima) v Immigration Appeal Tribunal* [2002] EWHC 80 (Admin).

11 Immigration and Asylum Act 1999 s 65(5) (amended by the Race Relations (Amendment) Act 2000 Sch 2 para 33).

12 Immigration and Asylum Act 1999 s 58, Sch 4 para 20(1). This does not prevent directions for the appellant's removal being given, or a deportation order being made, during that period, but no such direction or order is to have effect during that period: Sch 4 para 20(2), (3).

13 Ibid Sch 4 para 9(1), (3), (8). A passport with pages missing is not a 'valid' passport: *R v Secretary of State for the Home Department, ex p Karafu* [2001] Imm AR 26. See also *R v Naillie*, *R v Kanesarajah* [1993] AC 674, [1993] All ER 782, [1993] 2 WLR 927, HL. A reasonable explanation for failure to produce a passport does not mean that the person's behaviour must have been reasonable: *Naguleswaran v Secretary of State for the Home Department* (3 December 1999, unreported), QBD. An adjudicator must give reasons for rejecting an explanation as unreasonable: *R (Kamau) v Special Adjudicator* [2001] EWHC Admin 626, [2001] All ER (D) 205 (May). Reliance on this ground is inappropriate in cases of clandestine entry: *Hua v Secretary of State for the Home Department* (21 April 1999, unreported), IAT.

14 Immigration and Asylum Act 1999 Sch 4 para 9(1), (5). An application should not be certified as showing no Convention reason on credibility grounds: *Gaviria v Secretary of State for the Home Department* [2001] EWHC Admin 250, [2002] 1 WLR 65. There is no definition of 'manifestly unfounded' but for a claim to be properly said to be manifestly unfounded the Secretary of State must be satisfied that there is plainly nothing of substance in the case: see *R (on the application of Yogathas and Thangarasa) v Secretary of State for the Home Department* [2001] EWCA Civ 1611.

15 Immigration and Asylum Act 1999 Sch 4 para 9(1), (6)(a).

16 Ibid Sch 4 para 9(1), (6)(b).

17 Ibid Sch 4 para 9(1), (6)©. A claim could be frivolous or vexatious either because it did not on its face engage the Convention at all or because the claimant's account was completely incredible or because the claim amounted to an attempt to re-litigate decided issues: *R v Special Adjudicator, ex p Paulino* [1996] Imm AR 122 (decided in relation to the Refugee Convention).

18 Immigration and Asylum Act 1999 Sch 4 para 9(1), (7). There is no definition of the term 'torture' for the purposes of the Immigration and Asylum Act 1999 and a definition may have the danger of impeding or inhibiting the very protection that it is designed to afford; a level of mistreatment that amounts to torture for one person in a given circumstance, may not so amount in respect of another person even in similar circumstances: see *R v Secretary of State for the Home Department, ex p Sarbjit Singh* [1999] Imm AR 445. The Secretary of State has accepted that for mistreatment to amount to torture for certification purposes it does not need to be officially instigated or sanctioned: see *Roszkowski v Special Adjudicator* [2001] EWCA Civ 650 (affg *R*

(on the application of *Roszkowski*) v *Special Adjudicator* (2000) Times, 29 November). The torture suffered must relate to the asylum claim being made, though it does not need to have been for any Refugee Convention reason: see *Nanthakumar v Secretary of State for the Home Department* [2000] INLR 480, CA; *Roszkowski v Special Adjudicator* supra; *R v Immigration Appeal Tribunal, ex p Brylewicz* (26 March 1999, unreported), QBD. The claimant's evidence need only establish a reasonable likelihood that he has been tortured for certification to be improper or for the adjudicator to disagree with the Secretary of State's opinion in this respect: see *R (on the application of Chohan) v Special Adjudicator* (10 October 2000, unreported), QBD.

The definition in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 4 February 1985; Misc 12 (1985); Cmnd 9593) art 1 is incorporated into domestic criminal law by the Criminal Justice Act 1988 s 134: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 160.

19 Immigration and Asylum Act 1999 Sch 4 para 9(2) (amended by the Race Relations (Amendment) Act 2000 Sch 2 para 39). For the certificate to be valid the Secretary of State must have certified that one of the necessary conditions applies and that the further condition does not apply and an invalid certificate cannot be cured by amendment at the hearing before the adjudicator: *Secretary of State for the Home Department v Ziar* [1997] Imm AR 456, IAT. On an appeal on both asylum and human rights grounds, the Secretary of State must certify both limbs of the appeal, and the adjudicator must uphold both certifications, for the appellant to lose his right to appeal to the Tribunal; and where only one limb is certified or certificate upheld, the appellant may appeal on the other: *R (on the application of Zenovics) v Secretary of State for the Home Department* [2002] EWCA Civ 273, CA.

The Secretary of State may still apply for leave to appeal to the Immigration Appeal Tribunal if the adjudicator agrees with the opinion expressed in his certificate but allows the appeal: *Secretary of State for the Home Department v Abdul Khan* [1999] INLR 309, IAT.

20 Immigration and Asylum Act 1999 Sch 4 para 9A (added by the Race Relations (Amendment) Act 2000 Sch 2 para 40).

21 Immigration and Asylum Act 1999 s 65(6).

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

179 Appeal against a racially discriminatory decision or one in breach of human rights

NOTE 3--*Kariharan*, cited, reported at [2002] 3 WLR 1782.

NOTE 5--See *R (on the application of Rodriguez-Torres) v Secretary of State for the Home Department* [2005] EWCA Civ 1328, [2005] All ER (D) 139 (Nov) (only in a most exceptional case would the return of a person to his country of origin contravene his rights under the European Convention on Human Rights on health grounds); *Y (Sri Lanka) v Secretary of State for the Home Department* [2009] EWCA Civ 362, [2009] All ER (D) 213 (Apr) (return would have reached high threshold of inhuman treatment as clear risk of suicide or self harm); *MA (Pakistan) v Secretary of State for the Home Department* [2009] EWCA Civ 953, (2009) Times, 5 October (in general court should not dismiss appeal founded on right to private family life on ground that claimant should apply for leave from abroad); *QY (China) v Secretary of State for the Home Department* [2009] EWCA Civ 680, [2009] All ER (D) 104 (Jul) (removal manifestly lawful and, fact that but for unsuccessful legal challenge she would not have remained in United Kingdom, manifestly proportionate); and *Patel v Entry Clearance Officer (Mumbai)* [2010] EWCA Civ 17, [2010] All ER (D) 153 (Jan).

NOTE 7--SI 2000/2246 now replaced by Immigration (Notices) Regulations 2003, SI 2003/658 (see PARA 187).

NOTE 10--An adjudicator's task in such cases is to assess whether the original decision is proportionate and one which strikes a fair balance between the competing interests in play: *Edore v Secretary of State for the Home Department* [2003] EWCA Civ 716, [2003] 3 All ER 1265. See *Dbeis v Secretary of State for the Home Department* [2005] EWCA Civ 584, [2005] All ER (D) 283 (May); and also *Huang v Secretary of State for the Home Department* [2007] UKHL 11, [2007] 4 All ER 15, applied in *AG (Eritrea) v Secretary of State for the Home Department* [2007] EWCA Civ 801, [2008] 2 All ER 28. See also *AB (Jamaica) v Secretary of State for the Home Department* [2007] EWCA Civ 1302, [2008] 1 WLR 1893; and *FK (Democratic Republic of Congo) v Secretary of State for the Home Department* [2007] All ER (D) 232 (Dec), CA; *AS (Libya) v Secretary of State for the Home Department* [2008] EWCA Civ 289, [2008] All ER (D) 129 (Apr) ('real risk' was more than mere possibility, but less than balance of probabilities); *R (on the application of Aguilar Quila) v Secretary of State for the Home Department* [2009] EWHC 3189 (Admin), [2010] 1 FCR 81.

NOTES 14, 18--Provisions of the European Convention on Human Rights other than art 3 can be engaged in relation to the removal of an individual from the United Kingdom where the anticipated treatment in the receiving state would be in breach of the requirements of the Convention but do not meet the minimum requirements of art 3: *R (on the application of Ullah) v Special Adjudicator; Do v Immigration Appeal Tribunal* [2004] UKHL 26, [2004] 3 All ER 785, [2004] WLR 23; applied in *R (on the application of Razgar) v Secretary of State for the Home Department* [2004] UKHL 27, [2007] 2 AC 167, [2004] 3 All ER 821.

TEXT AND NOTE 14--Head (2) omitted: 1999 Act Sch 4 para 9(1) amended, Sch 4 para 9(5) repealed by Nationality, Immigration and Asylum Act 2002 s 114(3), Sch 7 para 29(1).

NOTE 14--*Yogathas and Thangarasa*, cited, affirmed: [2002] UKHL 36, [2002] 4 All ER 800, [2002] 3 WLR 1276.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/180. Appeals against refusal of asylum.

180. Appeals against refusal of asylum.

A person who is refused leave to enter the United Kingdom¹, or who as a result of a decision to vary, or to refuse to vary, limited leave to enter or remain, may be required to leave the United Kingdom within 28 days², or against whom the Secretary of State has decided to make a deportation order or refused to revoke one³, or in respect of whom directions for his removal have been given⁴, may appeal to an adjudicator⁵ on the ground that his removal in pursuance of the refusal, order, directions or requirement to leave, would be contrary to the United Kingdom's obligations under the Refugee Convention⁶.

A person who has been refused leave to enter or remain in the United Kingdom on the basis of a claim for asylum made by him but has been granted (whether before or after the decision to refuse leave) limited leave to enter or remain, may, if that limited leave will not expire within 28 days of his being notified of the decision, appeal to the adjudicator against the refusal on the ground that requiring him to leave the United Kingdom after the time limited by the leave would be contrary to the Convention⁷.

A person may not bring an appeal on any of the above grounds if before the refusal, variation, decision or directions he has not made a claim for asylum⁸.

A person may not appeal on asylum grounds against a refusal to revoke a deportation order if he has had the right to appeal the decision to make the order on such grounds, whether or not he has exercised it⁹.

If, on an appeal by a person who claims that it would be contrary to the Convention relating to the Status of Refugees for him to be removed from, or required to leave the United Kingdom, the Secretary of State certifies that: (a) the claim does not show a fear of persecution by reason of the appellant's race, religion, nationality, membership of a particular social group, or political opinion; or (b) it shows a fear of such persecution, but the fear is manifestly unfounded or the circumstances which gave rise to the fear no longer subsist, and the evidence adduced in support of the claim does not establish a reasonable likelihood that the appellant has been tortured in the country to which he is to be sent, and the adjudicator agrees with the opinion expressed in the Secretary of State's certificate, no right of appeal to the Immigration Appeal Tribunal is conferred¹⁰.

1 Immigration and Asylum Act 1999 s 69(1). Leave to enter may be refused under the Immigration Act 1971: see para 84 et seq ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante. There is no appeal under the Immigration and Asylum Act 1999 s 69(1) if the Secretary of State certifies that directions have been given by him (and not by a person acting under his authority) for the appellant's exclusion on grounds of national security, or the refusal of leave to enter was in compliance with such directions: s 70(1). Such a person may appeal to the Special Immigration Appeals Commission: see para 184 post. As to the Secretary of State see para 2 ante.

2 Ibid s 69(2). This does not entitle a person to appeal against a variation of leave which reduces its duration, or a refusal to enlarge or remove the limit on its duration, if the Secretary of State has certified that the appellant's departure from the United Kingdom would be in the interests of national security, or that the decision questioned by the appeal was taken on that ground by the Secretary of State (and not by a person acting under his authority): s 70(2), (3). A right of appeal exists to the Special Immigration Appeals Commission in such case: see para 184 post. The interests of national security are not limited to measures protecting against direct threats to the United Kingdom or its citizens but can extend to measures directed against international terrorist activities; decisions as to whether something is or is not in the interests of national security are for the Secretary of State and can only be interfered with by the courts if the view taken by the Secretary of State is one that could not reasonably be entertained: *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, [2002] 1 All ER 122, [2001] 3 WLR 877.

3 Immigration and Asylum Act 1999 s 69(4)(a), (b). Section 69(4)(a) does not entitle a person to appeal against a decision to make a deportation order against him if the ground of the decision was that his deportation is in the interests of national security: s 70(5). Section 69(4)(b) does not entitle a person to appeal against a refusal to revoke a deportation order if the Secretary of State has certified that his exclusion from the United Kingdom would be in the interests of national security or revocation was refused on that ground by the Secretary of State (and not by a person acting under his authority): s 70(6). An appeal can be made to the Special Immigration Appeals Commission: see para 184 post. As to deportation see para 160 et seq ante.

4 Ibid s 69(5). Directions for removal are given as mentioned in s 66(1): see para 177 ante.

5 For the meaning of 'adjudicator' see para 174 note 2 ante.

6 Immigration and Asylum Act 1999 s 69(1), (2), (4), (5). The phrase 'contrary to the Convention' means contrary to the United Kingdom's obligations under the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906): Immigration and Asylum Act 1999 ss 69(6), 167(1).

7 Ibid s 69(3). An asylum appeal is concerned with refugee status, and it is wrong in principle to refuse to deal with an appeal against the refusal of asylum where the person has been granted 4 years' exceptional leave to remain, on the ground that future developments cannot be predicted: *Diriye v Secretary of State for the Home Department* [2001] EWCA Civ 2008.

The Immigration and Asylum Act 1999 s 69(3) does not entitle a person to appeal if the reason for the refusal was that he was a person to whom the Refugee Convention does not apply by reason of art 1F (exclusion from refugee status for persons believed to have committed war crimes, crimes against humanity, serious non-political crimes or acts contrary to the principles of the United Nations:), and the Secretary of State has certified

that disclosure of the material on which the refusal was based is not in the interests of national security: Immigration and Asylum Act 1999 s 70(4). In such a case an appeal lies to the Special Immigration Appeals Commission: see para 184 post. The Commission is not required to consider the well-foundedness of the fear: see the Anti-terrorism, Crime and Security Act 2001 s 34.

8 Immigration and Asylum Act 1999 s 70(7)(a). Any claim under one of the grounds set out in the text may not be made otherwise than under s 69: s 70(7)(b).

9 Ibid s 70(8).

10 See *ibid* Sch 4 para 9(1), (2), (4). See also para 179 ante. Although the effect of Sch 4 para 9(2) is that where a person alleges that his removal from the United Kingdom would contravene both the Refugee Convention and the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), a certificate in respect of one claim (if upheld) does not prevent an appeal to the Tribunal on the other ground, this cannot have been the intention of Parliament, which had clearly been to inhibit a further appeal only on the ground which had been certified: see *R (on the application of Zenovics) v Secretary of State for the Home Department* [2002] EWCA Civ 273.

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

180 Appeals against refusal of asylum

NOTES--The Court of Appeal has confirmed the correctness of guidance issued by the Immigration Appeal Tribunal in *Devaseelan v Secretary of State for the Home Department* [2003] Imm AR 1 concerning the relevance of the first application for asylum when determining a later one made on human rights grounds: see *Djebbar v Secretary of State for the Home Department* [2004] EWCA Civ 804, (2004) Times, 12 July. It is unlikely that the principles of *res judicata* or issue estoppel apply to appeals before immigration tribunals: *Ocampo v Secretary of State for the Home Department* [2006] EWCA Civ 1276, [2006] All ER (D) 59 (Oct).

TEXT AND NOTE 10--1999 Act Sch 4 para 9(1) amended, Sch 4 para 9(4) repealed: Nationality, Immigration and Asylum Act 2002 Sch 7 para 29(1).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/181. Appeals by asylum-seekers against removal to third countries.

181. Appeals by asylum-seekers against removal to third countries.

If the Secretary of State¹ intends to remove a person who has made a claim for asylum ('the claimant') from the United Kingdom² to a third country³, and certifies that certain conditions are fulfilled⁴, the claimant may appeal to an adjudicator⁵ on the ground that any of the conditions applicable to the certificate was not satisfied when it was issued, or has since ceased to be satisfied⁶. A person may not appeal on this ground while he is in the United Kingdom if he has been or is to be sent to a member state or a designated country⁷. Such a person is not entitled to appeal on the ground that the decision to remove him is racially discriminatory or in breach

of his human rights⁸ if the Secretary of State certifies that the allegation is manifestly unfounded⁹.

Unless a certificate of removal has been set aside on appeal¹⁰ or otherwise ceases to have effect, the person in respect of whom the certificate was issued is not entitled to appeal¹¹ as respects any matter arising before his removal from the United Kingdom¹².

1 As to the Secretary of State see para 2 ante.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 I.e. a country of which the claimant is not a national or citizen: see the Immigration and Asylum Act 1999 ss 11(2)(a)(ii), 12(7)(a).

4 If the Secretary of State intends to remove the claimant to a member state under standing arrangements, the conditions are that the member state has accepted that it is the responsible state in respect of the claimant's claim, and that in his opinion the claimant is not a national or citizen of the member state to which he is to be sent: *ibid* s 11(2). 'Standing arrangements' means arrangements in force as between member states for determining which state is responsible for considering applications for asylum: s 11(4). A member state is to be regarded for these purposes as a place where the person's life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and a place from which a person will not be sent to another country otherwise than in accordance with the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906): Immigration and Asylum Act 1999 s 11(1). The courts cannot go behind the parliamentary view that member states of the European Union are safe: *R (on the application of Ibrahim) v Secretary of State for the Home Department* [2001] EWCA Civ 519. If the Secretary of State intends to remove the person to a member state other than under standing arrangements, or to any other state, the conditions are that the claimant is not a national or citizen of the country to which he is to be sent; that his life and liberty would not be threatened there by reason of his race, religion, nationality, membership of a particular social group or political opinion, and the government of the country would not send him to another country otherwise than in accordance with the Refugee Convention: Immigration and Asylum Act 1999 s 12(7). See *Secretary of State for the Home Department v Adan* [2001] 2 AC 477, [2001] 1 All ER 593, [2001] 2 WLR 143, [2001] Imm AR 253, HL; *R v Special Adjudicator, ex p Kerrouche* [1997] Imm AR 610, CA; *R v Secretary of State for the Home Department, ex p Canbolat* [1998] 1 All ER 161, [1997] 1 WLR 1569, CA; *R v Secretary of State for the Home Department, ex p Dahmas* [1999] All ER (D) 1280, CA; and para 241 post.

5 For the meaning of 'adjudicator' see para 174 note 2 ante.

6 Immigration and Asylum Act 1999 s 71(1), (2).

7 *Ibid* s 72(2)(b). For the designated countries see the Asylum (Designated Safe Third Countries) Order 2000, SI 2000/2245, art 3; and para 241 post.

8 For appeals on grounds of racial discrimination or breach of human rights see para 179 ante.

9 Immigration and Asylum Act 1999 s 72(2)(a).

10 I.e. under *ibid* s 65 (as amended) or s 71.

11 I.e. under the Immigration and Asylum Act 1999.

12 *Ibid* s 72(1).

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

181 Appeals by asylum-seekers against removal to third countries

NOTES 3, 4--1999 Act ss 11, 12 repealed: Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 33(2), Sch 4. See now Sch 3; and PARA 241.

NOTE 4--The one-month time limit within which to make directions for removal under the 1990 Dublin Convention (see PARA 241) which is a standing arrangement for these purposes is to run from the date that an applicant's appeal has concluded: *Ali v Secretary of State for the Home Department* 2003 SLT 674, OH. See also *R (on the application of Omar) v Secretary of State for the Home Department* [2004] EWHC 1427 (Admin), [2004] ACD 345.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/182. Power to make regulations in relation to EEA nationals.

182. Power to make regulations in relation to EEA nationals.

The Secretary of State¹ may by regulations make provision for appeals against any immigration decision² in relation to: (1) an EEA national³; (2) a member of the family⁴ of an EEA national; (3) a member of the family of a United Kingdom national⁵ who is neither such a national nor an EEA national⁶.

The regulations may also make provision for appeals against any decision concerning the matters mentioned above taken in relation to a citizen of any other state on whom any such entitlement has been conferred by an agreement to which the United Kingdom is a party or by which it is bound⁷.

An appeal under the regulations lies to an adjudicator⁸ or, in such circumstances as may be prescribed, to the Special Immigration Appeals Commission⁹. The regulations may provide for appeals from the adjudicator or the Commission¹⁰. The regulations may also prescribe cases, or classes of case, in which a person is not entitled to appeal while he is in the United Kingdom¹¹.

The regulations may make provision under which an appellant may be required to state, in such manner as may be prescribed, any grounds he has or may have for wishing to be admitted to, or to remain in, the United Kingdom additional to those on which he is appealing and for the consequences of such a requirement¹².

The statutory provisions concerning appeals¹³ have effect subject to any such regulations made by the Secretary of State¹⁴.

If a person claims to be an EEA national, he may not appeal under the regulations unless he produces a valid national identity card, or a valid passport, issued by an EEA state other than the United Kingdom¹⁵.

1 As to the Secretary of State see para 2 ante.

2 'Immigration decision' means a decision concerning a person's removal from the United Kingdom or his entitlement: (1) to be admitted to the United Kingdom; (2) to reside, or to continue to reside, in the United Kingdom; or (3) to be issued with, or not to have withdrawn, a residence permit: Immigration and Asylum Act 1999 s 80(2). As to the meaning of 'United Kingdom' see para 5 note 1 ante. 'Residence permit' means any permit or other document issued by the Secretary of State as proof of the holder's right of residence in the United Kingdom: s 80(15).

3 For these purposes, 'EEA national' means a person who is, or claims to be, a national of an EEA state (other than the United Kingdom): *ibid* s 80(10). For the meaning of 'EEA state' see para 170 note 9 ante. As to EEA nationals see also para 225 et seq post.

4 The regulations may: (1) prescribe the persons who, for the purposes of *ibid* s 80, are the members of a person's family; and (2) make provision as to the manner in which membership of a person's family is to be established: s 80(14). See the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 6 (as amended); and para 227 note 12 post.

5 'United Kingdom national' means a person who falls to be treated as a national of the United Kingdom for the purposes of the Community Treaties: Immigration and Asylum Act 1999 s 80(11).

6 *Ibid* s 80(1). See the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended); and para 183 post. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

7 Immigration and Asylum Act 1999 s 80(3).

8 For the meaning of 'adjudicator' see para 174 note 2 ante.

9 Immigration and Asylum Act 1999 s 80(4).

10 *Ibid* s 80(5).

11 *Ibid* s 80(6).

12 *Ibid* s 80(7). The regulations may also amend the Special Immigration Appeals Commission Act 1997 ss 2 (as amended), 2A (as added and amended) (appellate jurisdiction of the Commission) (see para 184 post) and amend or revoke the Immigration (European Economic Area) Order 1994, SI 1994/1895: Immigration and Asylum Act 1999 s 80(8). The Immigration (European Economic Area) Order 1994, SI 1994/1895, has been revoked in this way: see the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 1.

13 *Ie* the Immigration and Asylum Act 1999 Pt IV (ss 58-81) (as amended).

14 *Ibid* s 80(9).

15 *Ibid* s 80(12). For these purposes, a document is to be regarded as being what it purports to be unless its falsity is reasonably apparent, and is to be regarded as relating to the person producing it unless it is reasonably apparent that it relates to another person: s 80(13).

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

182 Power to make regulations in relation to EEA nationals

NOTES 4, 6, 12--SI 2000/2326 replaced: Immigration (European Economic Area) Regulations 2006, SI 2006/1003 (amended by SI 2008/1117). SI 2000/2326 regs 1, 6 now SI 2006/1003 regs 1, 7.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/183. Appeals by EEA nationals.

183. Appeals by EEA nationals.

A person who has or claims to have rights as an EEA national¹, or member of his family², may appeal against an EEA decision³ concerning his removal from the United Kingdom, entitlement to be admitted to the United Kingdom, or entitlement to be issued with or to have renewed, or not to have revoked, a residence permit or residence document⁴. These appeal rights are subject to the requirement to produce a valid national identity card or passport⁵ and, where the person claims to be the family member of another person, an EEA family permit⁶ or other proof that he is related as claimed⁷. Such an appeal may in particular be made on the ground that, in taking the decision, the decision-maker acted in breach of that person's human rights or racially discriminated against him⁸.

Except where an appeal lies to the Special Immigration Appeals Commission, it lies to an adjudicator⁹.

A person is not entitled to appeal while he is in the United Kingdom against an EEA decision to refuse to admit him to the United Kingdom, to refuse to revoke a deportation order against him, or to refuse to issue him with an EEA family permit¹⁰, or against a decision to remove someone from the United Kingdom after refusing to admit him¹¹. But he may so appeal against refusal of admission, or removal consequent to the refusal, if the appeal is to the Special Immigration Appeals Commission, or the ground of the appeal alleges a breach of his human rights, or where the person held an EEA family permit, a residence permit or a residence document on arrival in the United Kingdom¹².

1 Ie a national of an EEA state: see the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 2. For the meanings of 'EEA national' and 'EEA state' see para 227 post. As to EEA nationals see also para 225 et seq post.

2 Ie rights under the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended) or under EEC Commission Regulation 1251/70 (OJ L142, 30.06.70, p 24) on the right of workers to remain in the territory of a member state after having been employed in that state: Immigration (European Economic Area) Regulations 2000, SI 2000/2326, regs 2(1), 28. As to the determination of family members see reg 6; and para 227 note 12 post.

3 'EEA decision' means a decision under the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended), or under EEC Commission Regulation 1251/70 (OJ L142, 30.06.70, p 24), which concerns a person's: (1) removal from the United Kingdom; (2) entitlement to be admitted to the United Kingdom; or (3) entitlement to be issued with or to have renewed, or not to have revoked, a residence permit or residence document: Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 27(2). As to the meaning of 'United Kingdom' see para 5 note 1 ante.

4 Ibid regs 27(2), 29(1). 'Residence permit' means a permit issued to an EEA national in accordance with reg 10 (see para 228 post) or reg 15 (see para 231 post) as proof of the holder's right of residence in the United Kingdom; 'residence document' means a document so issued in accordance with reg 10 or reg 15 to a person who is not an EEA national: reg 2(1). There is no right of appeal against a decision to grant a five-year residence permit instead of indefinite leave to remain: *Boukssid v Secretary of State for the Home Department* [1998] Imm AR 270, [1998] 2 FLR 200, CA, decided under the equivalent provisions of the Immigration Act 1971 Pt II (ss 12-23) (now repealed) and the Immigration (European Economic Area) Order 1994, SI 1994/1895 (now revoked).

5 The card or passport must be issued by an EEA state other than the United Kingdom: Immigration and Asylum Act 1999 s 80(12); Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 29(1).

6 'EEA family permit' means a document issued to a person, in accordance with ibid reg 10 (see para 228 post) or reg 13 (see para 229 post), in connection with his admission to the United Kingdom: reg 2(1).

7 Ibid regs 29(1), 33.

8 Ibid reg 29(2) (amended by SI 2001/865). As to human rights and discrimination appeals see para 179 ante. For these purposes: (1) a decision-maker racially discriminates against a person if he acts, or fails to act, in relation to that other person in a way which is unlawful by virtue of the Race Relations Act 1976 s 19B (as added) (see DISCRIMINATION vol 13 (2007 Reissue) para 470); and (2) a decision-maker acts in breach of a person's human rights if he acts, or fails to act, in relation to that other person in a way which is made unlawful by the Human Rights Act 1998 s 6(1) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS): Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 27(3) (amended by SI 2001/865).

9 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 29(3). For the meaning of 'adjudicator' see para 174 note 2 ante; definition applied by reg 27(1). The Immigration and Asylum Act 1999 s 58, Sch 4 has effect with modifications in relation to appeals to the adjudicator under the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended): reg 29(4). An appeal lies to the Special Immigration Appeals Commission (1) in respect of a decision to remove the person from the United Kingdom if the ground of the decision is that removal is conducive to the public good as being in the interests of national security or of the relations between the United Kingdom and any other country or for other reasons of a political nature; or (2) in respect of a refusal to admit the person to the United Kingdom, if directions were given by the Secretary of State (and not by a person acting under his authority) for the person not to be admitted on the ground that exclusion is conducive to the public good, or admission was refused in compliance with such directions; or (3) in respect of a decision not to issue or renew, or to revoke, a residence permit or residence document, where the decision was taken in connection with a decision to remove the person from the United Kingdom or to refuse admission to the United Kingdom: reg 31. As to appeals to the Special Immigration Appeals Commission see para 184 post.

10 Ibid reg 30(1).

11 Ibid reg 30(2). But where an EEA national has been physically present in the United Kingdom on temporary admission pending refusal, the refusal of admission constitutes a decision concerning expulsion rather than entry, and attracts the right of appeal or review before implementation of the removal guaranteed by EEC Council Directive 64/221 (OJ B56, 04.04.64, p 850) art 9: Case C-357/98 *R (on the application of Yiadom) v Secretary of State for the Home Department* [2001] All ER (EC) 267, ECJ.

12 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 30(3) (modified in its application to Swiss nationals by the Immigration (Swiss Free Movement of Persons) (No 3) Regulations 2002, SI 2002/1241, reg 2(3), Schedule para 20). If a person in the United Kingdom appeals under the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 29 against an EEA decision to refuse to admit him to the United Kingdom, or against a decision to remove him, any directions previously given by virtue of the refusal for his removal from the United Kingdom cease to have effect, except in so far as they have already been carried out, and no directions may be given while the appeal is pending: reg 34(1), (2). This does not prevent the exercise of the power to detain under the Immigration Act 1971 ss 4, 5, Schs 2, 3 (as amended): see the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 34(3). The bail provisions of the Immigration Act 1971 Sch 2 (as amended) apply (see para 214 post): see the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 34(6). In calculating the period of two months limited by the Immigration Act 1971 Sch 2 para 8(2) (see para 152 ante) for the giving of directions for the removal of a person from the United Kingdom and the giving of a notice of intention to give such directions, any period during which there is pending an appeal by him under the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 29 (as amended) is to be disregarded: reg 34(4). A deportation order is not to be made while an appeal against an EEA decision to remove the person from the United Kingdom is pending: reg 34(5). An appeal is to be treated as pending during the period beginning when notice of appeal is given and ending when the appeal, including any further appeal, is finally determined, withdrawn or abandoned: reg 34(7), (8). A pending appeal is not to be treated as abandoned solely because the appellant leaves the United Kingdom: reg 34(9). Regulation 34 does not apply to an appeal which lies to the Special Immigration Appeals Commission as a result of reg 31 (see note 9 supra): reg 34(10).

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

183 Appeals by EEA nationals

NOTES--SI 2000/2326 replaced: Immigration (European Economic Area) Regulations 2006, SI 2006/1003 (amended by SI 2009/1117). As to appeals against decisions made under SI 2006/1003 see Pt 6 (regs 25-29), Sch 1 (reg 27 amended by SI 2009/1117).

NOTES 2, 3--EC Commission Regulation 1251/70: repealed by EC Commission Regulation 635/2006 (OJ L112 26.4.2006 p 9); see now art 17 of European Parliament and EC

Council Directive 2004/38 (OJ L158 30.4.2004 p 77) on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/184. Appeals to the Special Immigration Appeals Commission.

184. Appeals to the Special Immigration Appeals Commission.

A person may appeal to the Special Immigration Appeals Commission against a decision which he would be entitled to appeal against under any provision of Part IV of the Immigration and Asylum Act 1999¹ (other than refusal of a certificate of entitlement or entry clearance²) but for a public interest provision³. Such an appeal includes an appeal against an EEA decision⁴.

A person may appeal to the Commission against the refusal of an entry clearance if he would be entitled to appeal against the refusal⁵ but for a public interest provision⁶ and: (1) he seeks to rely on an enforceable Community right or any provision made under the European Communities Act 1972⁷; or (2) he seeks to enter the United Kingdom under the Immigration Rules⁸ making provision about entry (a) to exercise rights of access to a child resident there; (b) as the spouse or fiancé of a person present and settled there; or (c) as the parent, grandparent or other dependent relative of a person present and settled there⁹.

A person who alleges that an authority¹⁰ has, in taking an appealable decision¹¹, racially discriminated against him¹² or acted in breach of his human rights¹³ may appeal to the Commission against that decision¹⁴.

A person is not to be required to leave, or be removed from, the United Kingdom if an appeal is pending against the decision on which that requirement or removal would otherwise be based¹⁵. An appeal to the Commission is treated as pending during the period beginning when notice of appeal is given and ending when the appeal is finally determined, withdrawn or abandoned¹⁶. An appeal is not treated as finally determined while a further appeal may be brought¹⁷, but if a further appeal is brought, the original appeal is not treated as finally determined until the further appeal is determined, withdrawn or abandoned¹⁸. A pending appeal is treated as abandoned if: (i) the appellant leaves the United Kingdom¹⁹; (ii) the appellant is granted leave to enter or remain in the United Kingdom²⁰; or (iii) a deportation order is made against the appellant²¹.

No appeal may be brought on grounds alleging racial discrimination or breach of human rights under the provisions of the Immigration and Asylum Act 1999²² in respect of a decision if that decision is already the subject of an appeal to the Commission and that appeal has not been determined²³.

If a person who has brought an appeal²⁴ has been notified of the Secretary of State's decision either to make a deportation order against him, or to refuse to revoke a deportation order against him, and he is not entitled to appeal against either decision under the provisions of the Immigration and Asylum Act 1999²⁵ and appeals against either decision to the Commission, any appeal is transferred to, and must be heard by, the Commission²⁶. Where a person with an appeal under the Immigration and Asylum Act 1999 states²⁷ an additional ground which may be the subject of an appeal to the Commission, the appeal under the Immigration and Asylum Act 1999 is transferred to and must be heard by the Commission²⁸.

A suspected international terrorist may appeal to the Commission against his certification as such by the Secretary of State²⁹.

On an appeal which includes an asylum appeal before the Commission, where the Secretary of State issues a certificate that the appellant is not entitled to the protection of the Refugee Convention³⁰ and that his removal from the United Kingdom would be conducive to the public good, the Commission must consider those statements first and, if it agrees, must dismiss the asylum claim before considering any other aspect of the case³¹.

The Commission is a superior court of record³².

1 le the Immigration and Asylum Act 1999 Pt IV (ss 56-81) (as amended).

2 le other than *ibid* s 59(2): see para 174 ante. As to certificates of entitlement see paras 78, 85 ante. As to entry clearance see para 96 ante.

3 Special Immigration Appeals Commission Act 1997 s 2(1), (1A) (s 2(1) substituted and s 2(1A)-(1C) added by the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 32(1), (2)). 'Public interest provision' means any of the following: the Immigration and Asylum Act 1999 s 60(9) (refusal of leave to enter or entry clearance on the ground that the Secretary of State has directed that exclusion is conducive to the public good); s 62(4) (refusal to vary leave on the personal decision of the Secretary of State that departure from the United Kingdom would be conducive to the public good for national security, diplomatic or political reasons); s 64(1) (decision to deport on the ground that deportation is conducive to the public good for national security, diplomatic or political reasons); s 64(2) (refusal to revoke a deportation order on the personal decision of the Secretary of State that exclusion is conducive to the public good); or s 70(1)-(6) (reflecting similar considerations in asylum cases): see the Special Immigration Appeals Commission Act 1997 s 2(1B) (as so added). A reference in the Special Immigration Appeals Commission Act 1997 to an appeal under s 2 (as amended) includes a reference to an appeal under the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 29(1) (other than on the ground mentioned in reg 29(2) (as amended)) which lies to the Commission as a result of reg 31: Special Immigration Appeals Commission Act 1997 s 2(1C) (as so added). For determination of appeals by the Commission and appeals from it see para 189 post; and for the procedure on appeal see para 194 post. The Commission has a bail jurisdiction in certain cases where a person is detained in the interests of national security: see s 3, Sch 3. As to the Secretary of State see para 2 ante.

4 See *ibid* s 2(1C) (as added); and note 3 supra.

5 le under the Immigration and Asylum Act 1999 s 59(2): see para 174 ante.

6 le *ibid* s 60(9): see note 1 supra; and para 174 ante.

7 le any provision made under the European Communities Act 1972 s 2(2): see EUROPEAN COMMUNITIES.

8 As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).

9 Special Immigration Appeals Commission Act 1997 s 2(2) (amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 para 120).

10 'Authority' means the Secretary of State, an immigration officer or a person responsible for the grant or refusal of entry clearance: Special Immigration Appeals Commission Act 1997 s 2A(6) (s 2A added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 118, 121).

11 'Appealable decision' means a decision against which a person would be entitled to appeal under the Immigration and Asylum Act 1999 Pt IV (as amended) but for a public interest provision (see note 3 supra): Special Immigration Appeals Commission Act 1997 s 2A(7), (8) (s 2A as added (see note 10 supra); and s 2A(7), (8) substituted by the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 32). A reference in the Special Immigration Appeals Commission Act 1997 to an appeal under s 2A (as added and amended) includes a reference to an appeal under the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 29(1), on the ground mentioned in reg 29(2) (as amended), which lies to the Commission as a result of reg 31 (see para 183 ante): Special Immigration Appeals Commission Act 1997 s 2A(9) (s 2A as added (see note 10 supra); s 2A(9) substituted by the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 32).

12 An authority racially discriminates against a person if he acts or fails to act in relation to that other person in a way which is unlawful by virtue of the Race Relations Act 1976 s 19B (as added) (see DISCRIMINATION vol 13 (2007 Reissue) para 470): Special Immigration Appeals Commission Act 1997 s 2A(2)(a) (s 2A as added (see note 10 supra); s 2A(2)(a) added by the Race Relations (Amendment) Act 2000 s 9(1), Sch 2 para 24).

13 An authority acts in breach of a person's human rights if he acts, or fails to act, in relation to that other person in a way which is made unlawful by the Human Rights Act 1998 s 6(1): Special Immigration Appeals

Commission Act 1997 s 2A(2)(b) (s 2A as added (see note 10 supra); s 2A(2)(b) amended by the Race Relations (Amendment) Act 2000 Sch 2 para 24).

14 Special Immigration Appeals Commission Act 1997 s 2A(1) (s 2A as added (see note 10 supra); s 2A(1) amended by the Race Relations Amendment Act 2000 Sch 2 para 23). If, in any appellate proceedings being heard by the Commission, a question arises as to whether an authority has, in taking a decision which is the subject of the proceedings, racially discriminated against the appellant or acted in breach of his human rights, the Commission has jurisdiction to consider the question, and if the Commission decides that the authority concerned racially discriminated against him or acted in breach of his human rights, the appeal may be allowed on the ground in question: Special Immigration Appeals Commission Act 1997 s 2A(3)-(5) (s 2A as added (see note 10 supra); s 2A(3), (5) amended by the Race Relations Amendment Act 2000 Sch 2 paras 25, 26).

15 Special Immigration Appeals Commission Act 1997 s 2(3), Sch 2 para 3G(1) (Sch 2 paras 3A-3G added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 118, 126). However, that does not prevent directions for his removal being given, or a deportation order being made against him during that period, but no such direction or order is to have effect during that period: Sch 2 para 3G(2), (3) (as so added). If a person in the United Kingdom appeals on being refused leave to enter, or against directions for his removal as an illegal entrant or person unlawfully in the United Kingdom or on deportation, any directions for his removal, or for the removal of members of his family, previously given cease to have effect, except in so far as they have already been carried out, and no directions may be given so long as the appeal is pending: Sch 2 paras 1, 2 (Sch 2 paras 1, 2 substituted by the Immigration and Asylum Act 1999 Sch 14 paras 118, 126); Special Immigration Appeals Commission Act 1997 Sch 2 para 3B (as so added). For the purposes of Sch 2 (as amended), an appeal under s 2 (as amended) or s 2A (as added and amended) is treated as pending during the period beginning when notice of appeal is duly given and ending when the appeal is finally determined or withdrawn; and an appeal is not to be treated as finally determined so long as a further appeal can be brought by virtue of s 7 (as amended) (see para 189 post), nor, if such an appeal is duly brought, until it is determined or withdrawn: Sch 2 para 4 (amended by the Immigration and Asylum Act 1999 Sch 14 paras 118, 127; and the Race Relations (Amendment) Act 2000 s 9(1), Sch 2 para 29(a)). However, the provisions of the Immigration Act 1971 relating to detention and persons liable to detention apply as if such directions were in force: see the Special Immigration Appeals Commission Act 1997 Sch 2 para 3 (substituted by the Immigration and Asylum Act 1999 Sch 14 paras 118, 126). A variation of limited leave is not to take effect while an appeal is pending against it: Special Immigration Appeals Commission Act 1997 Sch 2 para 3C (as so added). While an appeal is pending the leave to which it relates, and any conditions subject to which it was granted, continue to have effect: Sch 2 para 3D(1) (as so added). A person may not make an application for variation of leave while the leave is treated as continuing as a result of Sch 2 para 3D(1) (as added): Sch 2 para 3D(2) (as so added). For the purposes of s 2(1) (as substituted), in calculating whether, as a result of a decision, a person may be required to leave the United Kingdom within 28 days, a continuation of leave under Sch 2 para 3D (as added) is to be disregarded: Sch 2 para 3D(3) (as so added). A deportation order is not to be made against any person while an appeal against the decision to make it is pending: Sch 2 para 3E (as so added). In calculating the period of eight weeks set by the Immigration Act 1971 s 5(3) (deportation order not to be made against a person as a member of the family of another person if more than eight weeks have elapsed since the other person left the United Kingdom after the making of a deportation order against him), the period during which an appeal is pending is to be disregarded: Special Immigration Appeals Commission Act 1997 Sch 2 para 3F (as so added). In calculating the period of two months limited by the Immigration Act 1971 Sch 2 para 8(2) for the giving of directions under that provision for the removal of a person from the United Kingdom and for the giving of a notice of intention to give such directions, any period during which there is pending an appeal by him under the Special Immigration Appeals Commission Act 1997 s 2(1) (as substituted) is to be disregarded: Sch 2 para 3A (as so added).

16 Ibid s 7A(1) (s 7A added by the Immigration and Asylum Act 1999 Sch 14 paras 118, 124).

17 Special Immigration Appeals Commission Act 1997 s 7A(2) (as added: see note 16 supra).

18 Ibid s 7A(3) (as added: see note 16 supra).

19 Ibid s 7A(4) (as added: see note 16 supra).

20 Ibid s 7A(5) (s 7A as added: see note 16 supra). Section 7A(5) (as added) does not apply if the appeal was brought as a result of the Immigration and Asylum Act 1999 s 70(4) (see para 180 ante): Special Immigration Appeals Commission Act 1997 s 7A(6) (as so added).

21 Ibid s 7A(7) (as added: see note 16 supra). This only applies if the appeal was brought as a result of the prohibition under the Immigration and Asylum Act 1999 s 62(3) (see para 175 ante): Special Immigration Appeals Commission Act 1997 s 7A(7) (as so added).

22 Ie under the Immigration and Asylum Act 1999 s 65 (as amended): see para 179 ante.

23 Ibid s 65(6).

24 le under ibid Pt IV (as amended).

25 le under ibid s 64(1) or s 64(2): see para 176 ante.

26 Ibid s 78(1)-(3).

27 le by a statement of additional grounds under ibid s 74 (as amended) or s 75: see para 185 post.

28 Ibid s 78(4), (5).

29 See the Anti-terrorism, Crime and Security Act 2001 s 25. A certificate may be issued if the Secretary of State reasonably believes that the person's presence in the United Kingdom is a risk to national security and suspects that he is a terrorist: see s 21. The effect of the certificate is to enable the Secretary of State to take enforcement action despite the fact that the action cannot result in his removal (see s 22), and to detain him indefinitely (see s 23). The Commission must review a certificate issued under s 21 as soon as reasonably practicable after six months (or six months after an appeal against certification is finally determined): see s 26. As to the expiry of ss 21-23 see para 168 ante. As to derogation from the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) see para 167 ante. The Commission hears legal proceedings where a derogation matter is brought into question: see the Anti-terrorism, Crime and Security Act 2001 s 30. For the meaning of 'derogation matter' see para 167 note 10 ante. As to the detention of terrorists see para 166 ante. See also paras 167-168 ante.

30 le the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmnd 3906) art 1F or art 33(2).

31 See the Anti-terrorism, Crime and Security Act 2001 s 33. If the Commission does not agree with such statements it must quash the decision or action against which the asylum appeal is brought (s 33(5)), but the quashing does not prejudice any later decision (s 33(6)). No court may entertain proceedings for questioning a decision of the Secretary of State in connection with certification, or a claim for asylum in such a case, or the decision of the Secretary of State as a result of the dismissal of the asylum appeal, save for an appeal on a point of law under the Special Immigration Appeals Commission Act 1997 s 7 (as amended) (see para 189 post): Anti-terrorism, Crime and Security Act 2001 s 33(8), (9).

32 Special Immigration Appeals Commission Act 1997 s 1(3) (added by the Anti-terrorism, Crime and Security Act 2001 s 35). A decision of the Commission may be questioned in legal proceedings only in accordance with the Special Immigration Appeals Commission Act 1997 s 7 (as amended) (see para 189 post) or the Anti-terrorism, Crime and Security Act 2001 s 30(5)(a) (derogation: see note 29 supra; and para 167 ante): Special Immigration Appeals Commission Act 1997 s 1(4) (added by the Anti-terrorism, Crime and Security Act 2001 s 35).

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

184 Appeals to the Special Immigration Appeals Commission

TEXT AND NOTES--See the Asylum (Procedures) Regulations 2007, SI 2007/3187, reg 5 (Secretary of State's duty to defray the costs of providing an interpreter in the Special Immigration Appeals Commission).

TEXT AND NOTES 1-9--1997 Act s 2 substituted: Nationality, Immigration and Asylum Act 2002 Sch 7 para 20; and amended by Immigration, Asylum and Nationality Act 2006 Sch 1 para 14. A person may now appeal to the Special Immigration Appeals Commission against a decision if (1) he would be able to appeal against the decision under the 2002 Act ss 82(1), 83(2) or 83A(2) but for a certificate of the Secretary of State under s 97; or (2) an appeal against the decision under ss 82(1), 83(2) or 83A(2)

lapsed under s 99 by virtue of a certificate of the Secretary of State under s 97: 1997 Act s 2(1).

The Immigration Act 1971 s 3C or 3D (continuation of leave) and the 2002 Act ss 78 (no removal while appeal pending), 79 (deportation order: appeal), 82(3) (variation or revocation of leave to enter or remain: appeal), 84 (grounds of appeal), 85 (matters to be considered), 86 (determination of appeal), 87 (successful appeal: direction), 96 (earlier right of appeal), 104 (pending appeal), 105 (notice of immigration decision) and 110 (grants) apply, with any necessary modifications, in relation to an appeal against an immigration decision under the 1997 Act s 2 as they apply in relation to an appeal under the 2002 Act s 82(1) (see PARA 173A.2): 1997 Act s 2(2). The 2002 Act ss 85(4), 86, 87, 110 apply, with any necessary modifications, in relation to an appeal against a decision other than an immigration decision under the 1997 Act s 2 as they apply in relation to an appeal under the 2002 Act s 83(2) or 83A(2) (see PARA 173A.3): 1997 Act s 2(3).

An appeal against the rejection of a claim for asylum under s 2 is treated as abandoned if the applicant leaves the United Kingdom: s 2(4). A person may bring or continue an appeal against an immigration decision under s 2 while he is in the United Kingdom only if he would be able to bring or continue the appeal while he was in the United Kingdom if it were an appeal under the 2002 Act s 82(1) (see PARA 173A.2): 1997 Act s 2(5).

'Immigration decision' has the meaning given by the 2002 Act s 82(2) (see PARA 173A.2): 1997 Act s 2(6).

TEXT AND NOTES 10-14--1997 Act s 2A repealed: 2002 Act Sch 7 para 21.

TEXT AND NOTE 15--1997 Act Sch 2 repealed: 2002 Act Sch 7 para 26.

TEXT AND NOTES 16-21--1997 Act s 7A repealed: 2002 Act Sch 7 para 24.

TEXT AND NOTE 29--2001 Act ss 21-32 repealed: Prevention of Terrorism Act 2005 s 16(2) (a).

NOTE 29--See *M v Secretary of State for the Home Department* [2004] EWCA Civ 324, [2004] 2 All ER 863 (reasonable suspicion for purposes of 2001 Act s 21 not established by mere presence of suspicious circumstances).

NOTE 31--2001 Act s 33 repealed: Immigration, Asylum and Nationality Act 2006 s 55(6), Sch 3. See further s 55(1)-(5); and PARA 239.

NOTE 32--Reference to 2001 Act s 30(5)(a) repealed: 1997 Act s 1(4) (amended by Prevention of Terrorism Act 2005 s 16(2)(b)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/185. One-stop appeal procedure.

185. One-stop appeal procedure.

If: (1) the decision on an application for leave to enter or remain in the United Kingdom¹ is that the application be refused; (2) as a result of a decision to vary, or to refuse to vary, any limited leave to enter or remain in the United Kingdom which a person has, he may be required to leave the United Kingdom within 28 days of being notified of the decision; or (3) the Secretary of State² has decided to make a deportation order against a person³, and in each case that person, while he is in the United Kingdom, is entitled to appeal against that decision⁴, then the decision-maker⁵ must serve on the applicant and on any relevant member of his family⁶ a

notice⁷ requiring the recipient of the notice to state⁸ any additional grounds which he has or may have for wishing to enter or remain in the United Kingdom⁹. A statement must, if the person making it wishes to claim asylum, include a claim for asylum, and, if he claims that he was racially discriminated against, or that an act breached his human rights, include notice of that claim¹⁰. If the applicant's¹¹ statement¹² does not mention a particular ground on which he wishes to enter or remain in the United Kingdom, and of which he is aware at the material time, he may not rely on that ground in any appeal¹³. If the applicant's statement does not include a claim for asylum and the applicant claims asylum after the end of the prescribed period¹⁴, no appeal may be made¹⁵ if the Secretary of State has certified that in his opinion one purpose of making the claim for asylum was to delay the removal from the United Kingdom of the applicant or of any member of his family¹⁶, and the applicant had no other legitimate purpose for making the application¹⁷.

If a person who is an illegal entrant, or is liable to be removed¹⁸, or has arrived in the United Kingdom without leave to enter, or an entry clearance, or a current work permit in which he is named, makes a claim for asylum or a claim that it would be contrary to the United Kingdom's obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)¹⁹ for him to be removed from, or required to leave, the United Kingdom, then the person responsible for the determination of the claim must serve on the claimant and on any relevant member of his family²⁰ a notice²¹ requiring the recipient of the notice to state²² any additional grounds which he has or may have for wishing to enter or remain in the United Kingdom²³. If a claim is determined against a person on whom a notice has been served and that person appeals against the determination, he may not rely on any ground on which he wishes to enter or remain in the United Kingdom and of which he is aware at the material time, if his statement does not mention that ground²⁴.

Where an appeal is brought against a decision: (a) to refuse a claim for asylum²⁵; (b) to refuse an application for leave to enter or remain in the United Kingdom; (c) to vary, or to refuse to vary, any limited leave to enter or remain in the United Kingdom, which has the result that the appellant may be required to leave the United Kingdom within 28 days of being notified of the decision; or (d) to make a deportation order against the appellant²⁶, he is treated as also appealing on any additional grounds which he may have for appealing against the refusal, variation, decision or directions in question, and which he is not prevented²⁷ from relying on²⁸.

Where an appellant has appealed²⁹ and the appeal has been finally determined, if the appellant serves a notice of appeal making a claim that, in taking a decision, the decision-maker racially discriminated against him or acted in breach of his human rights, the Secretary of State may certify that in his opinion the claim could reasonably have been included in a statement³⁰ but was not, or could reasonably have been made in the original appeal but was not; that one purpose of such a claim would be to delay the removal from the United Kingdom of the appellant or of any member of his family; and that the appellant had no other legitimate purpose for making the claim³¹. On the issue of such a certificate, the appeal so far as regards that claim, is to be treated as finally determined³². If on service of a further notice of appeal, the Secretary of State certifies that the grounds contained in the notice of appeal were considered in the original appeal, the appeal so far as concerns those grounds, is to be treated as finally determined³³. If an immigration officer or the Secretary of State makes a decision in relation to the appellant on the appellant's application, he may certify that in his opinion one purpose of making the application was to delay the removal from the United Kingdom of the appellant or of any member of his family; and that the appellant had no other legitimate purpose for making the application; and no appeal may be brought against a decision on an application in respect of which such a certificate has been issued³⁴.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to the Secretary of State see para 2 ante.

3 le under the Immigration Act 1971 s 5(1) as a result of his liability to deportation under s 3(5) (as substituted): see para 160 ante.

4 le under the Special Immigration Appeals Commission Act 1997 or the Immigration and Asylum Act 1999.

5 'Decision-maker' means the Secretary of State or (as the case may be) an immigration officer: *ibid* s 74(5). For the meaning of 'immigration officer' see para 86 note 12 ante.

6 A relevant member of an applicant's family is a person: (1) who is the subject of a decision mentioned in heads (1)-(3) in the text, but is not himself an applicant; and (2) who appears to the decision-taker to be (a) his spouse; (b) a child of his or of his spouse; (c) a person who has been living with him as a member of an unmarried couple for at least two of the three years before the day on which the decision was made; (d) a person who is dependent on him; or (e) a person on whom he is dependent: *ibid* s 74(8); Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 6. 'Decision-taker' means the Secretary of State or an immigration officer, as the case may be: reg 2(1).

7 For the form of the notice see the Immigration and Asylum Act 1999 s 74(9); Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 3(1), Schedule Pt I (substituted by SI 2001/867). The notice is to provide a postal address to which the statement may be returned by post, an address to which the statement may be returned by hand, a fax number which may be used to return the statement by fax, and be accompanied by a copy of the statement form: Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 3(3). The notice may be served by hand, by fax, or by sending it by postal service in which delivery or receipt is recorded to the last known or usual place of abode of the requisite person or his representative, or an address provided by him or his representative for correspondence: reg 3(4). If the notice is served by post, addressed to the requisite person, it is to be taken to have been received by the requisite person on the second day after the day on which it was posted, unless the contrary is proved: reg 3(6). The notice may be served on the requisite person by serving it on his representative: reg 3(5). As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

8 The statement must be in writing and served on the Secretary of State before the end of such period as may be prescribed by regulations: Immigration and Asylum Act 1999 s 74(6). The statement is made by completing in full, and in English, a statement form which must be signed by the requisite person or his representative: Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 4(1), (2). For the statement form see reg 2(1), Schedule Pt III. The statement may be served by hand, by post, or by fax, using the address or fax number specified in the notice: reg 4(6). The statement is to be taken to have been served as required on the day on which it is received at the address or fax number specified in the notice: reg 4(7). Unless a notice has been served and the requisite person is entitled to appeal under the Special Immigration Appeals Commission Act 1997, where the requisite person is in custody, the statement may also be served by giving it to the person who has custody of the requisite person: Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 4(8), (9).

9 Immigration and Asylum Act 1999 s 74(1)-(4).

10 *Ibid* s 74(7) (amended by the Race Relations (Amendment) Act 2000 s 9(1), Sch 2 para 37).

11 'The applicant' means the person on whom a notice has been served under the Immigration and Asylum Act 1999 s 74(4), including members of the original applicant's family: see s 76(1)(a); and note 6 *supra*. 'Notice' means a notice served under s 74 (as amended): s 76(1)(b).

12 'Statement' means the statement which the notice requires the applicant to make to the Secretary of State: *ibid* s 76(1)©.

13 *Ibid* s 76(2). This provision applies to appeals to the Special Immigration Appeals Commission or under the Immigration and Asylum Act 1999 Pt IV (as amended): s 76(2). Section 76(2) does not apply if the ground is a claim for asylum or a claim that an act racially discriminated against the applicant or breached the applicant's human rights, or the Secretary of State considers that the applicant had a reasonable excuse for the omission: s 76(3) (amended by the Race Relations (Amendment) Act 2000 Sch 2 para 38).

14 The prescribed period is ten days where the applicant is entitled to appeal under the Immigration and Asylum Act 1999, or five days where the applicant is entitled to appeal under the Special Immigration Appeals Commission Act 1997: Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 4(3). The prescribed period is to be calculated from the expiry of the day on which the notice was received by the requisite person or his representative, and, where the relevant period: (1) expires on an excluded day (ie Saturday, Sunday, a bank holiday, Christmas Day, 27-31 December or Good Friday), the statement is to be taken to have been served as required if served on the next day that is not an excluded day; (2) includes an excluded day, that day is to be discounted: reg 4(5), (10), (11).

15 Ie under the Immigration and Asylum Act 1999 s 69: see para 180 ante.

16 For these purposes, 'member of the family' means: (1) a person on whom the applicant is dependent; or (2) a person who, in relation to the applicant (a) is his spouse; (b) is a child of his or of his spouse; (c) has been living with him as a member of an unmarried couple for at least two of the three years before the day on which the applicant claimed asylum; or (d) is dependent on him: *ibid* s 76(6); Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 8.

17 Immigration and Asylum Act 1999 s 76(4), (5).

18 Ie under *ibid* s 10: see para 154 ante.

19 Ie the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969). See also para 179 ante.

20 A relevant member of a claimant's family is a person who has made an application for leave to enter or remain in the United Kingdom, but is not himself a claimant, and who appears to the decision-taker to be his spouse, a child of his or of his spouse, a person who has been living with him as a member of an unmarried couple for at least two of the three years before the day on which the claim was made, a person who is dependent on him, or a person on whom he is dependent: Immigration and Asylum Act 1999 s 75(5); Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 7.

21 For the form of the notice see *ibid* Schedule Pt II (substituted by SI 2001/867). As to the requirements of a notice and service see the Immigration and Asylum Act 1999 s 75(4); and note 7 *supra*.

22 As to the requirements of such statements see note 8 *supra*. The statement must be in writing and served on the person who is responsible for the determination of the claim before the end of such period as may be prescribed: *ibid* s 75(3). The relevant period for these purposes is ten days: Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 4(4).

23 Immigration and Asylum Act 1999 s 75(1), (2).

24 *Ibid* s 75(6); Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 5(1), (5). This regulation does not apply if the claim is determined before the expiry of the period prescribed under reg 4(4) for submission of the statement of additional grounds: reg 5(2).

25 Ie under the Immigration and Asylum Act 1999 s 69: see para 180 ante.

26 *Ibid* s 77(1). A deportation order may be made under the Immigration Act 1971 s 5(1) as a result of the person's liability to deportation under s 3(5) (as substituted): see para 160 ante. As to deportation see para 160 *et seq* ante.

27 Ie by any provision of the Immigration and Asylum Act 1999 s 76 (as amended) or the Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 5.

28 Immigration and Asylum Act 1999 s 77(2). 'Additional grounds', in relation to an appeal, means any grounds specified in a statement made to the Secretary of State under s 74(4) (see the text and note 9 *supra*) other than those on which the appeal has been brought: s 77(5).

29 Ie under the Special Immigration Appeals Commission Act 1997 or the Immigration and Asylum Act 1999.

30 Ie required under *ibid* s 74 (as amended) or s 75.

31 *Ibid* s 73(1), (2); Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 5.

32 Immigration and Asylum Act 1999 s 73(3). Nothing in s 58(6) (see para 173 ante) affects the operation of s 73(3), (6): s 73(10).

33 *Ibid* s 73(4)-(6); Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 5(4). See also note 32 *supra*.

34 Immigration and Asylum Act 1999 s 73(7)-(9).

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

185 One-stop appeal procedure

NOTE 8--Where reg 4(4)(a) (see NOTE 22 head (1)) applies the statement must be served by hand: SI 2000/2244 reg 4(6) (amended by SI 2002/2731).

NOTE 21--SI 2000/2244 Schedule Pt II amended: SI 2002/2731.

NOTE 22--Relevant period now (1) three days where an applicant is detained under the Immigration Act 1971 and is entitled to reside in one or more of the Republic of Cyprus, the Czech Republic, the Republic of Estonia, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Malta, the Republic of Poland, the Slovak Republic or the Republic of Slovenia; and (2) ten days in any other case: SI 2000/2244 reg 4(4) (amended by SI 2002/2731).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/186. Circumstances in which there is no right of appeal.

186. Circumstances in which there is no right of appeal.

There is no right of appeal against any of the following:

- 510 (1) refusal of entry clearance as a visitor, except a family visitor¹;
- 511 (2) refusal of leave to enter as a visitor, unless the person had a current entry clearance²;
- 512 (3) a refusal of entry clearance or leave to enter for short-term study or as a prospective student, unless the person holds a current entry clearance³;
- 513 (4) refusal of entry clearance or leave to enter as a dependant of persons in heads (1) to (3) above⁴;
- 514 (5) refusal of entry clearance or leave to enter because the person does not have the right passport or identity document, entry clearance or work permit⁵;
- 515 (6) refusal of entry clearance or leave to enter because the person does not satisfy a requirement of the Immigration Rules as to age, nationality or citizenship⁶;
- 516 (7) refusal of entry clearance or leave to enter because the person seeks entry for a period exceeding that permitted by the rules⁷;
- 517 (8) refusal of entry clearance or leave to enter as a dependant of a person in heads (5) to (7) above⁸;
- 518 (9) refusal of entry clearance on the personal decision of the Secretary of State that exclusion is conducive to the public good, unless the person seeks to rely on an enforceable Community right or for specified family purposes⁹;
- 519 (10) a decision that leave to enter is required for a person claiming exemption from a requirement, except for holders of documents required by the rules or by order¹⁰;
- 520 (11) refusal of entry to a person without the necessary British passport or certificate of entitlement but who claims to have the right of abode¹¹;
- 521 (12) refusal to issue a special voucher¹²;

- 522 (13) refusal to issue a work permit or to approve a training or work experience scheme¹³;
- 523 (14) refusal to vary leave to remain where the purported appeal was made after the expiry of the existing leave to remain, including any statutory extension of leave¹⁴;
- 524 (15) imposition of conditions or refusal to revoke conditions of leave¹⁵;
- 525 (16) the grant of a lesser leave than that sought (except where asylum is refused and a period of leave granted)¹⁶;
- 526 (17) refusal to vary leave because the person did not have a required entry clearance in the appropriate capacity, or a passport or work permit or equivalent after-entry permission¹⁷;
- 527 (18) refusal to vary leave because the person does not satisfy a requirement of the Immigration Rules as to age, nationality or citizenship¹⁸;
- 528 (19) refusal to vary leave because variation would result in leave exceeding the maximum permitted under the Immigration Rules¹⁹;
- 529 (20) refusal to vary leave because the fee has not been paid²⁰;
- 530 (21) variation of conditions of leave made by statutory instrument, or refusal of the Secretary of State to make a statutory instrument²¹;
- 531 (22) cancellation of leave when the holder is outside the common travel area²²;
- 532 (23) a decision to remove a person as an illegal entrant or a person unlawfully in the United Kingdom as an overstayer, someone who has breached his conditions of leave or who has obtained leave to remain by deception²³;
- 533 (24) a decision to deport following a recommendation by a criminal court²⁴;
- 534 (25) an EEA decision, if the applicant could not produce a valid national identity card or passport issued by an EEA state outside the United Kingdom²⁵.

In addition, there is no right of appeal from inside the United Kingdom against: (a) a refusal of leave to enter, unless, at the time of the refusal, the person had a current entry clearance or work permit in his name²⁶; (b) a refusal to revoke a deportation order²⁷; (c) a decision to remove an asylum claimant to a member state or a designated country²⁸.

There is no right of appeal (including on human rights, discrimination or asylum grounds) if the application on which the decision was taken was not made on a prescribed form on which it is required to be made, or where an applicant was required to take prescribed steps, or to do so within a prescribed period or at a prescribed time and has failed to do so²⁹.

There is no right of appeal on asylum grounds against refusal of leave to enter, variation or refusal to vary leave, a decision to deport, refusal to revoke a deportation order, or directions for removal if the applicant has not made an asylum claim before the decision³⁰.

There is no further appeal if, on the application of the applicant, an immigration officer or the Secretary of State makes a decision and certifies that in his opinion one purpose of making the application was to delay the removal from the United Kingdom of the applicant or any member of his family, and the applicant had no other legitimate purpose for making the application³¹.

There is no right of appeal if a claim for asylum is not made in a statement of additional grounds and, on refusal of a subsequent claim, the Secretary of State certifies that one purpose of making the claim was to delay the removal from the United Kingdom of the applicant or any member of his family, and the applicant had no other legitimate purpose for making the application³².

In addition, where, after an appeal under the Special Immigration Appeals Commission Act 1997 or the Immigration and Asylum Act 1999 has been finally determined³³, an appellant serves a further notice of appeal making a claim that a decision was racially discriminatory or in breach of his human rights, and the Secretary of State certifies that in his opinion: (i) the appellant's claim (A) could reasonably have been included in a statement required from him under the one-stop procedure³⁴ but was not so included; (B) could reasonably have been made

in the original appeal but was not so made; (ii) one purpose of such a claim would be to delay the removal from the United Kingdom of the appellant or of any member of his family; and (iii) the appellant had no other legitimate purpose for making the claim, the appeal so far as relating to that claim, is to be treated as finally determined³⁵.

If, after an appeal under the one-stop procedure has been finally determined, the appellant serves a further notice of appeal and the Secretary of State certifies that grounds contained in the notice of appeal were considered in the original appeal, the appeal, so far as relating to those grounds, is treated as finally determined³⁶.

1 Immigration and Asylum Act 1999 s 60(5)(a). An appeal may be lodged on discrimination or human rights grounds under s 65 (as amended): see para 179 ante. For the meaning of 'family visitor' see para 174 note 26 ante.

2 Ibid s 60(5)(b). An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

3 Ibid s 60(4), (5). An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

4 Ibid s 60(4)(d). An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

5 Ibid s 60(7)(a), (8). An appeal may be lodged on discrimination or human rights grounds: see note 1 supra. As to entry clearance see para 96 ante.

6 Ibid s 60(7)(b). An appeal may be lodged on discrimination or human rights grounds: see note 1 supra. As to citizenship see paras 8, 23-43 ante. As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).

7 Immigration and Asylum Act 1999 s 60(7)©. An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

8 Ibid s 60(7). An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

9 Special Immigration Appeals Commission Act 1997 s 2(2) (amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 118, 120); Immigration and Asylum Act 1999 s 60(9). As to the Secretary of State see para 2 ante. An enforceable Community right includes any provision made under the European Communities Act 1972 s 2(2): see EUROPEAN COMMUNITIES. Specified family purposes are applications under the Immigration Rules providing for entry to exercise rights of access to a child resident in the United Kingdom, as the spouse or fiancé of a person present and settled in the United Kingdom, or as the parent, grandparent or other dependent relative of a person so present and settled: Special Immigration Appeals Commission Act 1997 s 2(2) (as so amended); Immigration and Asylum Act 1999 s 60(9). See also para 177 ante.

10 Ibid s 60(2). Section 60(2) refers to persons who are required by Immigration Rules or an order under the Immigration Act 1971 s 8(2) (as amended) to hold a specified document: see para 88 ante.

11 Immigration and Asylum Act 1999 s 60(1). An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

12 See *Shah v Secretary of State for the Home Department* [1972] Imm AR 56 (British subjects in East Africa); *Re Amin* [1983] 2 AC 818, [1983] 2 All ER 864, HL; *Yakub v Chief Immigration Officer, Heathrow* [1988] Imm AR 177, CA. An appeal may be lodged on discrimination or human rights grounds: see note 1 supra. As to special vouchers see para 120 ante.

13 See *Pearson v Immigration Appeal Tribunal* [1978] Imm AR 212, CA. See also paras 110-111 ante.

14 *Suthendran v Immigration Appeal Tribunal* [1977] AC 359, [1976] 3 All ER 611, HL; *Wa-Selo v Secretary of State for the Home Department* [1990] Imm AR 76, CA; *Akhtar v Secretary of State for the Home Department* [1991] Imm AR 232, CA. The Immigration Act 1971 s 3C (as added) has the same effect as the Immigration (Variation of Leave) Order 1976, SI 1976/1572 (as amended) in extending leave until a decision is made on an application submitted before the expiry of leave, to enable an appeal to be lodged while limited leave is extant: see para 175 text and notes 13-15 ante. 'Packing up time' is not leave to remain and there is no appeal against a refusal to extend it: *R v Immigration Appeal Adjudicator, ex p Bhanji* [1977] Imm AR 89, CA. Nor is there a right of appeal against refusal to extend a discretionary amnesty to the applicant (*Purewal v Entry Clearance Officer, New Delhi* [1977] Imm AR 93), although a right of appeal on discrimination or human rights grounds will be available (see note 1 supra).

15 Immigration and Asylum Act 1999 s 61.

16 Ibid s 69(3).

17 Ibid s 62(1)(a), (2). An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

18 Ibid s 62(1)(b). An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

19 Ibid s 62(1)(c). An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

20 Ibid s 62(1)(d). An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

21 Ibid s 62(5). An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

22 Ie under the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 13(7). An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

23 Ie under the Immigration Act 1971 s 4, Sch 2 para 9 (as amended) (illegal entrants), the Immigration and Asylum Act 1999 s 10 and the Immigration (Removal Directions) Regulations 2000, SI 2000/2243 (overstayers, persons in breach of condition and remaining by deception): see para 154 ante. An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

24 Under the Immigration Act 1971 s 3(6): see s 6(5) (amended by the Criminal Justice Act 1982 ss 77, 78, Sch 15, para 15, Sch 16). A recommendation may be appealed through the criminal courts: see para 176 ante. An appeal against a decision to implement the recommendation may be lodged on discrimination or human rights grounds: see note 1 supra.

25 Immigration and Asylum Act 1999 s 80(12). See further para 183 ante. An appeal may be lodged on discrimination or human rights grounds: see note 1 supra.

26 Ibid s 60(3). An appeal may be lodged on discrimination or human rights grounds (see note 1 supra) or on asylum grounds if asylum is claimed (see para 180 ante).

27 Ibid s 64(3). An appeal may be lodged on discrimination or human rights grounds (see note 1 supra) or on asylum grounds if asylum is claimed (unless the person has had a right of appeal on asylum grounds against the decision to deport, whether or not he exercised it (see s 70(8)) (see para 180 ante).

28 Ibid s 72(2). An appeal may be lodged on discrimination or human rights grounds (see note 1 supra), but not if the Secretary of State certifies the human rights or discrimination claim as manifestly unfounded: see s 72(2); and para 181 ante.

29 Ibid s 72(3). See further para 173 ante. Where a form is prescribed or where procedural or other steps are prescribed for a particular kind of application under the Immigration Act 1971 the application must be made in that form and those steps must be taken: s 31A (added by the Immigration and Asylum Act 1999 s 165).

30 Immigration and Asylum Act 1999 s 70(7).

31 Ibid s 73(9).

32 Ibid s 76(5); Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 5(5).

33 As to appeals to the Special Immigration Appeals Commission see para 184 ante; and as to appeals under the Immigration and Asylum Act 1999 see paras 174-181 ante.

34 Ie under ibid s 74 (as amended): see para 185 ante.

35 Ibid s 73(1), (2), (3).

36 Ibid s 73(4), (5), (6).

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

186 Circumstances in which there is no right of appeal

TEXT AND NOTE 9--1997 Act s 2 substituted: Nationality, Immigration and Asylum Act 2002 Sch 7 para 20; and amended by Immigration, Asylum and Nationality Act 2006 Sch 1 para 14.

NOTE 29--1971 Act s 31A amended: 2002 Act s 121. As to regulations made under the 1971 Act s 31A, see now the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2007, SI 2007/882 (amended by SI 2007/1122).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/187. Notice of right of appeal.

187. Notice of right of appeal.

The Secretary of State¹ may by regulations provide:

- 535 (1) for written notice to be given to a person of any such decision or action taken in respect of him as is appealable² (whether or not in his particular case he is entitled to appeal) or would be so appealable but for the ground on which it was taken³;
- 536 (2) for any such notice to include a statement of the reasons for the decision or action and, where the action is the giving of directions for the removal of the person from the United Kingdom⁴, of the country to which he is to be removed⁵;
- 537 (3) for any such notice to be accompanied by a statement containing particulars of the rights of appeal available⁶ and of the procedure by which those rights may be exercised⁷;
- 538 (4) for the form of any such notice or statement and the way in which a notice is to be, or may be, given⁸.

The decision-maker⁹ must give written notice to the requisite person of any decision or action taken in respect of him which is appealable¹⁰.

The notice must include a statement of the reasons for the decision or action to which it relates, and, if it relates to the giving of directions for the removal of the person from the United Kingdom, must state the country to which removal is proposed¹¹. The notice must also include or be accompanied by a statement informing the requisite person of:

- 539 (a) his right of appeal, and the statutory provision on which it is based;
- 540 (b) the manner in which it is to be brought;
- 541 (c) a postal address to which a notice of appeal may be returned by post;
- 542 (d) an address to which a notice of appeal may be returned by hand;
- 543 (e) a fax number which may be used to return a notice of appeal by fax;
- 544 (f) the time within which an appeal is to be brought; and
- 545 (g) the facilities available for advice and assistance in connection with the appeal¹².

A defective notice will not necessarily invalidate the decision to which it relates¹³.

1 As to the Secretary of State see para 2 ante.

2 le under the Immigration and Asylum Act 1999 Pt IV (ss 56-81) (as amended).

3 Ibid s 58, Sch 4 para 1(1)(a).

4 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

5 Immigration and Asylum Act 1999 Sch 4 para 1(1)(b).

6 See note 2 supra.

7 Immigration and Asylum Act 1999 Sch 4 para 1(1)(c).

8 Ibid Sch 4 para 1(1)(d).

9 'Decision-maker' means: (1) the Secretary of State; (2) an immigration officer; (3) an entry clearance officer; and 'entry clearance officer' means a person responsible for the grant or refusal of entry clearance: Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246, reg 2.

10 Ibid reg 4(1). If the notice is given to the representative (ie a person who appears to the decision-maker to be the representative of a requisite person, and not to be prohibited from acting as a representative by the Immigration and Asylum Act 1999 s 84 (see para 170 ante) of the requisite person, it is taken to have been given to the requisite person: Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246, reg 4(2). Where the notice is given of a decision to refuse leave to a person to enter the United Kingdom, it is not necessary in addition for notice to be given of the decision that he requires leave unless he claims or has claimed that leave is not required: reg 4(3). No notice of a decision is required to be given by reason only of the fact that the decision could be appealed under the Immigration and Asylum Act 1999 s 65 (as amended) (see para 179 ante) or the Special Immigration Appeals Commission Act 1997 s 2A (as added and amended) (see para 184 ante) if the person in question were to make an allegation that an authority had racially discriminated against him or acted in breach of his human rights in taking it; but such notice must be given on such allegation being made: Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246, reg 4(4) (amended by SI 2001/868). For the meaning of 'authority' see para 179 note 1 ante; definition applied by the Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246, reg 4(5).

Notices may be given by hand, sent by fax, or sent by postal service in which delivery or receipt is recorded, to the last known or usual place of abode of the requisite person or his representative, or an address provided by him or his representative for correspondence: reg 7. See *Wa-Selo v Secretary of State for the Home Department* [1990] Imm AR 76, CA; *R v Secretary of State for the Home Department, ex p Kamara* [1991] Imm AR 423 (Secretary of State is entitled to rely on credible evidence of whereabouts coming from an applicant's friends or relatives, not just from the applicant himself). A person's 'last known place of abode' under the Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246, reg 7 need not be one at which there is reason to believe he is still living: *Singh v Secretary of State for the Home Department* [1992] 4 All ER 673, [1992] 1 WLR 1052, HL. If a notice given under regulations made under the Immigration and Asylum Act 1999 Sch 4 para 1 is sent by first class post, addressed to the person to whom it is required to be given, it is to be taken to have been received by that person on the second day after the day on which it was posted unless the contrary is proved: Sch 4 para 2. Where a notice required to be given by the Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246, reg 4 (as amended) is sent by postal service under reg 7 to a place outside the United Kingdom, it is deemed, unless the contrary is proved, to have been received on the twenty-eighth day after the day on which it was posted: reg 8 (added by SI 2001/868).

The procedure rules require notice to be received for the time limit for appealing to run: see the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 6, reversing *R v Secretary of State for the Home Department, ex p Yeboah and Draz* [1987] 3 All ER 999, [1987] Imm AR 414, CA. See also *R v Secretary of State for the Home Department, ex p Saleem* [2000] 4 All ER 814, [2001] 1 WLR 443, [2000] Imm AR 529, CA (no irrebuttable presumption of service permissible because of importance of right of access to Tribunal; procedure rule purporting to impose such a presumption ultra vires); *R v Secretary of State for the Home Department, ex p Chew, ex p Popatia* [2000] Imm AR 46 (notice of intention to deport which was not received by subject ineffective to stop the clock for purposes of long residence policy); *Jaroudy v Secretary of State for the Home Department* (9 February 1999, unreported), IAT (service on the authorities of a prison where a prisoner is detained is not good service). See also *R v Secretary of State for the Home Department, ex p Kondo* [1992] Imm AR 326.

Where a notice refusing leave to enter is given orally or to a responsible third party in accordance with the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 8(3) or art 9, an immigration officer must as soon as practicable give to him a notice in writing stating that he has been refused leave to enter the

United Kingdom and stating the reasons for the refusal: art 10(1). Where an immigration officer serves notice under the Immigration Appeals (Notices) Regulations 1984, SI 1984/2040, or the Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246 (as amended), he is not required to serve notice under the Immigration (Leave to Enter and Remain) Order 2000, SI 2000/1161, art 10(1): art 10(2). Notice under art 10(1) may be delivered or sent by post to that person's last known or usual place of abode or any address provided by him for receiving the notice: art 10(3).

As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante. As to the service of one-stop notices see para 185 note 7 ante.

11 Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246, reg 5(1). For the purpose of any proceedings under the Immigration and Asylum Act 1999 Pt IV (as amended) (including an appeal under the Special Immigration Appeals Commission Act 1997: see s 2, Sch 2 para 6 (substituted by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 118, 129; and amended by the Race Relations (Amendment) Act 2000 s 9(1), Sch 2 para 29(b))), a statement included in a notice in accordance with the regulations is conclusive as to the person by whom and the ground on which any decision or action was taken: Immigration and Asylum Act 1999 Sch 4 para 1(2). While the statutory ground set out in the notice is conclusive (see *R v Immigration Appeal Tribunal, ex p Mehmet (Ekrem)* [1977] Imm AR 56), the reasons given in the notice are not (*Parsaiyan v Visa Officer, Karachi* [1986] Imm AR 155; cf *R v Immigration Appeal Tribunal, ex p Hubbard* [1985] Imm AR 110 (distinction between grounds and reasons doubted). The notice is conclusive of the reasons for refusal for appellate purposes only, not on an application for judicial review considering the validity of the notice: *Dagdalen v Secretary of State for the Home Department* [1988] Imm AR 425, CA. In stating the reasons for a decision, an immigration officer is not required to state the facts and reasoning behind the decision, but needs only to provide enough information to enable the applicant to decide whether to appeal: *R v Secretary of State for the Home Department, ex p Taj Mohd Swati* [1986] 1 All ER 717, [1986] 1 WLR 477, [1986] Imm AR 88, CA, followed in *R v Secretary of State for the Home Department, ex p Mohammed and Khawaja* [1990] Imm AR 439 (no duty to give reasons for reasons). An immigration officer has the power to withdraw the original reasons for refusal and substitute new reasons in a notice in the light of new facts: *Dagdalen v Secretary of State for the Home Department* supra; *Rajendran v Secretary of State for the Home Department* [1989] Imm AR 512, IAT; *Uddin v Immigration Appeal Tribunal* [1991] Imm AR 134, CA. Notices issued under the Immigration Act 1971 s 4 (as amended) or Sch 2 para 6(2) (as amended) (notice of decisions as to leave to enter or remain) (see para 148 ante) are, if the statements required by the Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246, reg 5 are included or attached, generally deemed to comply with the regulations: see reg 6. As to the extent to which reasons need not be given where this would prejudice national security see *R v Secretary of State for the Home Department, ex p Cheblak* [1991] 2 All ER 319, [1991] 1 WLR 890, CA; but see *Chahal v United Kingdom* (1996) 23 EHRR 413; *Secretary of State for the Home Department v Rehman* [2000] 3 All ER 778, [2000] 2 WLR 1240, [2000] INLR 531, CA (affd [2001] UKHL 47, [2002] 1 All ER 122, [2001] 3 WLR 877).

12 Immigration and Asylum Appeals (Notices) Regulations 2000, SI 2000/2246, reg 5(2)(a)-(g).

13 *R v Immigration Appeal Tribunal, ex p Jeyanthan* [1999] 3 All ER 231, [2000] 1 WLR 354, CA (the questions for the court are: (1) whether there has been substantial compliance; (2) whether the non-compliance is capable of being waived and, if so, whether it has been or can or should be waived; (3) if it is incapable of being waived or is not waived, what the consequence of non-compliance would be). See also *Labiche v Secretary of State for the Home Department* [1991] Imm AR 263, CA; *Mawji v Secretary of State for the Home Department* [1986] Imm AR 290. A notice failing to inform the recipient of the time limit within which an application for leave to appeal must be made is invalid and time does not start to run for the purpose of appealing: *Akhuemonkhan v Secretary of State for the Home Department* [1998] INLR 265.

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

187 Notice of right of appeal

TEXT AND NOTES 9-12--SI 2000/2246 now replaced by Immigration (Notices) Regulations 2003, SI 2003/658 (amended by SI 2006/1003, SI 2006/2168, SI 2007/3187, SI 2008/684; SI 2008/1819, SI 2009/1117).

TEXT AND NOTES 9, 10--The decision-maker must give written notice to a person of the relevant grant of leave to enter or remain if, as a result of that grant, a right of appeal arises under the Nationality, Immigration and Asylum Act 2002 s 83(2): SI 2003/658 reg 4(2). The decision-maker must give written notice to a person of a decision that he is no longer a refugee if as a result of that decision a right of appeal arises under the 2002 Act s 83A(2): SI 2003/658 reg 4(2A) (added by SI 2006/2168).

NOTE 10--1997 Act s 2A repealed: 2002 Act Sch 7 para 21.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/188. Determination by adjudicators and the Immigration Appeal Tribunal.

188. Determination by adjudicators and the Immigration Appeal Tribunal.

Generally¹, and except where there is a restriction on the grounds of appeal², an adjudicator must allow an appeal if he considers: (1) that the decision or action against which the appeal is brought was not in accordance with the law or with any Immigration Rules applicable to the case³; or (2) where the decision or action involved the exercise of a discretion by the Secretary of State or an officer, that the discretion should have been exercised differently⁴. In any other case the adjudicator must dismiss the appeal⁵.

An adjudicator may review any determination of a question of fact on which the decision or action appealed against was based⁶.

If an appeal is allowed, the adjudicator must give such directions for giving effect to the determination as he thinks are required, and he may also make recommendations with respect to any other action which he considers should be taken in the case under any of the Immigration Acts⁷.

Any party who is dissatisfied with the adjudicator's determination on an appeal, may appeal to the Immigration Appeal Tribunal provided he obtains any appropriate leave⁸; the Tribunal may affirm the determination or make any other determination which could have been made by the adjudicator⁹.

If the Tribunal has made a final determination of an appeal, any party to the appeal may bring a further appeal to the appropriate appeal court on a question of law material to that determination¹⁰.

If, at any time before it determines an appeal, the Tribunal considers that the appeal has no merit it may notify the appellant of its opinion¹¹.

1 An adjudicator is obliged to dismiss an appeal against a refusal of leave to enter the United Kingdom under the Immigration and Asylum Act 1999 s 59 (see para 174 ante), if he is satisfied that the appellant at the time of the refusal was an illegal entrant, and an appeal against refusal of an entry clearance if a deportation order was at the time of the refusal in force against the appellant: s 58, Sch 4 para 24(1), (2). An adjudicator is bound to dismiss an appeal under s 66 (see para 177 ante) against the validity of directions for the removal of crew members, even if the ground of appeal is made out, if he is satisfied that there was power to give the same directions on the ground that the appellant was an illegal entrant: Sch 4 para 24(3). For the meaning of 'adjudicator' see para 174 note 2 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Ibid Sch 4 para 21(2). In appeals under s 66 (directions for removal of persons illegally in the United Kingdom) the ground of appeal is restricted to the argument that on the facts of the case there was in law no power to give the directions on the ground on which they were given. In such a case the adjudicator is concerned only with the existence of the power and not with the manner in which it has been exercised: *R v Secretary of State for the Home Department, ex p Malhi* [1991] 1 QB 194, [1990] 2 All ER 357, [1990] 2 WLR 932, CA; *R v Secretary of State for the Home Department, ex p Oladehinde* [1991] 1 AC 254, [1990] 3 All ER

393, [1990] 3 WLR 797, HL (decided on equivalent provisions relating to deportation under previous legislation). For restrictions on grounds of appeal in the one-stop appeals procedure see para 185 ante.

3 Immigration and Asylum Act 1999 Sch 4 para 21(1)(a). As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395). The relevant Immigration Rules are those in force at the time of the decision under challenge: *R v Immigration Appeal Tribunal, ex p Nathwani* [1979-80] Imm AR 9; *R v Secretary of State for the Home Department, ex p Mohammed Salim* [1990] Imm AR 316. The jurisdiction of the adjudicator to consider whether a decision is 'in accordance with the law' empowers him to consider whether the application called for the exercise of a discretion which has not in fact been exercised (*Yau Yak Wah v Home Office* [1982] Imm AR 16, CA; *R v Immigration Appeal Tribunal, ex p Malik* (1987) Times, 6 November); whether a decision taken outside the Immigration Rules takes account of or gives effect to the Secretary of State's published policy (*Abdi v Secretary of State for the Home Department* [1996] Imm AR 148, CA (affd [1996] 1 All ER 298, [1996] 1 WLR 641, HL); *Hersi v Secretary of State for the Home Department* [1996] Imm AR 569, CA); whether a decision outside the Immigration Rules is predicated on a misapprehension of material facts (*Abdi v Secretary of State for the Home Department* supra); whether the conduct of the decision-maker or the Secretary of State has given rise to a legitimate expectation to which effect ought to be given (*Gyeabour v Secretary of State for the Home Department* [1989] Imm AR 94, IAT. But it is not obvious that Parliament intended adjudicators to examine the validity of the Secretary of State's decision by reference to all the matters that would be relevant for a judicial review of that decision: *Abdi v Secretary of State for the Home Department* supra; *R v Immigration Appeal Tribunal, ex p Secretary of State for the Home Department* [1992] Imm AR 554. The Tribunal has held that it has no jurisdiction to examine the vires of an Immigration Rule: *Pardeepan v Secretary of State for the Home Department* [2000] INLR 447; *Koprnikov v Secretary of State for the Home Department* (5 February 2001, unreported), IAT.

There is no obligation on the adjudicator to search through the rules for anything which may help one side or the other, only to consider the appeal on the basis of the rules governing the category in which the appellant had applied and on which the Secretary of State had made a decision: *Uddin v Immigration Appeal Tribunal* [1991] Imm AR 134, CA (application as a spouse: no duty to consider application of the cohabitee rules if marriage found to be invalid); see also *Ashraf v Immigration Appeal Tribunal* [1990] Imm AR 234, CA. Where an application is made on one ground, an appeal cannot extend to a review on another ground where the two grounds are mutually exclusive; the grounds must have a sufficiently close link: *Hussain v Entry Clearance Officer, Islamabad* [1991] Imm AR 483 (natural child, stepchild and adopted child applications held mutually exclusive). However, the appellate authority is entitled to look at the whole of any relevant rule and is not restricted to just the parts of the rule, the reasons or the facts relied upon: *R v Immigration Appeal Tribunal, ex p Kwok On Tong* [1981] Imm AR 214; *R v Immigration Appeal Tribunal, ex p Hubbard* [1985] Imm AR 110; *Nadeem Tahir v Immigration Appeal Tribunal* [1989] Imm AR 98, CA (Tribunal at liberty to conclude that despite its different view of the facts which justified the decision, the discretion should not have been exercised differently). If the same rule could be relied upon in two different ways by an appellant but he relies upon it in only one way, the adjudicator should draw the appellant's attention to, and itself consider, the alternative way: *R v Immigration Appeal Tribunal, ex p Ali* [1988] Imm AR 237, CA. The appellate authority may take into account reasons not given in a notice of refusal, but no grounds other than those stated in the notice: *R v Immigration Appeal Tribunal ex p Mehra* [1983] Imm AR 156; *R v Immigration Appeal Tribunal, ex p Hubbard* supra; *Secretary of State for the Home Department v Salah Ziar* [1997] INLR 221, IAT.

4 Immigration and Asylum Act 1999 Sch 4 para 21(1)(b). The adjudicator is entitled to allow an appeal even if there is no new evidence before him which was not before the entry clearance officer or immigration officer: *Zakia Begum v Visa Officer, Islamabad* [1988] Imm AR 465. In reviewing a discretion inside the Immigration Rules, the adjudicator should not limit himself to determining whether the Secretary of State has considered all the relevant circumstances, but should exercise a fresh discretion based on all the relevant matters: *R v Immigration Appeal Tribunal, ex p Desai* [1987] Imm AR 18; *Umarji v Secretary of State for the Home Department* [1989] Imm AR 285, IAT; an approach modified in relation to national security appeals before the Special Immigration Appeals Commission: *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, [2002] 1 All ER 122, [2001] 3 WLR 877. For the purposes of the Immigration and Asylum Act 1999 Sch 4 para 21(1)(b), no decision or action which is in accordance with the Immigration Rules is to be treated as having involved the exercise of a discretion by the Secretary of State by reason only of the fact that he has been requested by or on behalf of the appellant to depart, or to authorise an officer to depart, from the rules and has refused to do so: Sch 4 para 21(4). The Secretary of State's refusal to depart from the Immigration Rules is not reviewable on the merits by the appellate authorities: *Beckett v Secretary of State for the Home Department* [1990] Imm AR 472, IAT; *Dawood Mohd Patel v Secretary of State for the Home Department* [1990] Imm AR 478, IAT (although this does not exclude the jurisdiction of the appellate authorities to consider whether the decision was 'in accordance with the law' within the Immigration and Asylum Act 1999 Sch 4 para 21(1)(a): see note 3 supra). However, an appeal does lie where the Secretary of State in the exercise of his statutory power grants extensions of leave in circumstances where there is no provision in the Immigration Rules for such extensions and subsequently refuses a further extension: *R v Immigration Appeal Tribunal ex p Takeo* [1987] Imm AR 522 (permit-free employment as the sole representative of an overseas firm).

Where on appeal it is determined that a discretion outside the Immigration Rules has not been exercised properly or at all, so that the decision is not in accordance with the law (see the Immigration and Asylum Act 1999 Sch 4 para 21(1)(a); and note 3 supra), the adjudicator may not substitute his own discretion, but should

make appropriate factual findings and allow the appeal, remitting it to the decision-maker for a decision in accordance with the facts found and the correct legal framework: *Kausar v Entry Clearance Officer, Islamabad* [1998] INLR 141, IAT.

5 Immigration and Asylum Act 1999 Sch 4 para 21(1), (2). It is not open to an adjudicator to remedy deficiencies in the Secretary of State's decision: *Yau Yak Wah v Home Office* [1982] Imm AR 16, CA; *R v Immigration Appeal Tribunal, ex p Shukla* [1990] COD 169. Even if the adjudicator makes a finding of fact at variance with the Secretary of State's view, he is not immediately obliged to allow the appeal as not being in accordance with the law under the Immigration and Asylum Act 1999 Sch 4 para 21(1)(a) (see note 3 supra), but is entitled to go on to review the exercise of the Secretary of State's discretion and to assess the relevant factors set out in the Immigration Rules: see *R v Immigration Appeal Tribunal, ex p Razaque* [1989] Imm AR 451 (adjudicator agreed with the exercise of the Secretary of State's discretion and dismissed the appeal despite disagreeing with the Secretary of State's doubts as to the validity of the appellant's marriage: determination upheld).

6 Immigration and Asylum Act 1999 Sch 4 para 21(3). In considering an asylum ground or any question relating to the appellant's rights under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 3 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 122 et seq), the appellate authority may take into account any evidence which it considers to be relevant to the appeal (including evidence relating to matters arising after the date on which the decision appealed against was taken): Immigration and Asylum Act 1999 s 77(3); *Ravichandran v Secretary of State for the Home Department* [1996] Imm AR 97, CA. The appellate authority must give full consideration to all the facts bearing on whether removal would be in breach of the relevant Convention, even if the refusal was made on grounds of non-compliance under the Immigration Rules para 340 (failure to make prompt and full disclosure of material facts or otherwise to assist the Secretary of State in establishing the facts): *Ali Haddad v Secretary of State for the Home Department* [2000] INLR 117, IAT.

In considering any other ground, the appellate authority may take into account only evidence which was available to the Secretary of State at the time when the decision appealed against was taken, or which relates to relevant facts as at that date: Immigration and Asylum Act 1999 s 77(4). See *R v Immigration Appeal Tribunal, ex p Weerasuriya* [1983] 1 All ER 195; *R v Immigration Appeal Tribunal, ex p Kotecha* [1983] 2 All ER 289, [1983] 1 WLR 487, CA; *R v Immigration Appeal Tribunal, ex p Bastiampillai* [1983] 2 All ER 844; *R v Secretary of State for the Home Department, ex p Miah* [1998] Imm AR 44 (immigrant's family refused entry on ground he could not support them; fresh evidence that he could now do so could not be taken into account). The submission of fresh evidence to the decision-maker after the decision and the review of that decision, in a supplementary refusal letter, does not give rise to a new date of decision so as to render the new evidence admissible: *R v Immigration Appeal Tribunal, ex p Maya Banu* [1999] Imm AR 161. But evidence of facts or circumstances which existed at the time of the Secretary of State's decision, but which were not known to him, may be admitted: *R v Immigration Appeal Tribunal, ex p Hassanin* [1987] 1 All ER 74, [1986] 1 WLR 1448, [1986] Imm AR 502, CA; *R v Immigration Appeal Tribunal, ex p Kandemir* [1986] Imm AR 510, CA. Post-decision facts which go to show intentions at the date of decision are admissible: *Patel v Secretary of State for the Home Department* [1986] Imm AR 440; *R v Immigration Appeal Tribunal, ex p Kumar* [1986] Imm AR 446, CA; *Mohammed Afzal v Visa Officer, Islamabad* [1986] Imm AR 474. In so far as the issue is one of assessing the future position, the appellate authorities are entitled to consider post-decision facts relevant to the assessment as it could have been made or as it was made at the date of decision: *Entry Clearance Officer, Islamabad v Bashir Ahmed* [1991] Imm AR 130, IAT. See also *R v Immigration Appeal Tribunal, ex p Kwok On Tong* [1981] Imm AR 214; *R v Immigration Appeal Tribunal, ex p Amirbeaggi* (1982) Times, 25 May; *Secretary of State for the Home Department v Thaker* [1976] Imm AR 114; *Patel v Secretary of State for the Home Department* [1986] Imm AR 440, IAT; *Secretary of State for the Home Department v Rajendran* [1989] Imm AR 512.

There is no obligation to inquire into every assertion in the refusal letter or explanatory statement: *Entry Clearance Officer, Islamabad v Hussain* [1991] Imm AR 476, IAT (but it is desirable to deal with all aspects on which refusal was based). The appellate authority may receive oral, documentary or other evidence of any fact which appears to be relevant to the appeal, notwithstanding that it would be inadmissible in a court of law: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 37(1); *R v Immigration Appeal Tribunal, ex p Miah* [1987] Imm AR 143. The mere fact that the refusal letter or explanatory statement contains a statement of belief based on hearsay assertion does not give rise to a duty on the appellate authorities to inquire into its veracity, especially where the appellant has not challenged the assertion, although the power to do so exists: *R v Immigration Appeal Tribunal, ex p Martinez-Tobon* [1987] Imm AR 536. Service of an explanatory statement is no longer required by the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333 (as amended).

7 Immigration and Asylum Act 1999 Sch 4 para 21(5). For the meaning of 'the Immigration Acts' see para 83 ante. The decision-maker must comply with directions (Immigration and Asylum Act 1999 Sch 4 para 21(6)), but need not do so while an appeal can be brought against the adjudicator's determination and, if an appeal is brought, while it is pending (Sch 4 para 22(4)). If the Immigration Appeal Tribunal affirms the adjudicator's determination to allow the appeal, it may alter or add to his directions and recommendations or replace them with its own directions and recommendations, and the provisions of Sch 4 para 21 apply to directions given by it accordingly: Sch 4 para 22(5), (6). If the appeal is dismissed by an adjudicator but allowed by the Tribunal, Sch

4 para 21 applies in the same way to any directions and recommendations made by the Tribunal: see Sch 4 para 22(7). As to the power to give directions generally and the proper exercise of that power see *R v Immigration Appeal Tribunal, ex p Mahendra Singh* [1984] Imm AR 1; *Yousuf v Entry Clearance Officer, Karachi* [1990] Imm AR 191, IAT (directions should normally be given only when requested by a party); *Entry Clearance Officer, Atlanta v Broz* [1988] Imm AR 59 (inappropriate for the adjudicator to direct that the appellant should be granted a two week visitor's visa when allowing an appeal almost one year after the initial refusal). In relation to asylum appeals see *R v Immigration Appeal Tribunal and an Immigration Appeal Adjudicator, ex p Secretary of State for the Home Department* [1990] Imm AR 166, DC (adjudicator directed that indefinite leave to remain should be granted to asylum-seekers on their return); *Haibe v Secretary of State for the Home Department* [1997] INLR 119, IAT (adjudicator entitled to direct that appellant's recognition as a refugee is retrospective to date of decision appealed); cf *Merzouk v Secretary of State for the Home Department* [1999] INLR 468, IAT. In a case where the Secretary of State has failed to exercise discretion properly outside the Immigration Rules, the appropriate direction is that the Secretary of State consider the case in accordance with the relevant policy and in the light of the evidence available and the facts found by the adjudicator: *Kausar v Entry Clearance Officer, Islamabad* [1998] INLR 141, IAT. In the absence of any directions, the officer who re-examines the case has a duty to make further inquiries under the Immigration Rules about the up to date circumstances of the appellant (although it would not be proper for him to try to circumvent the adjudicator's decision by seeking to refuse entry on a new basis). If the further inquiries reveal deception, that is capable of amounting to a change of circumstances justifying the officer taking a different view from the adjudicator who was ignorant of the deception: see *R v Secretary of State for the Home Department, ex p Yousuf* [1989] Imm AR 554. The absence of directions does not deprive a determination of binding effect so as to allow the Secretary of State to refuse to give effect to it: *R (on the application of Bofo) v Secretary of State for the Home Department* [2002] EWCA Civ 44, [2002] 1 WLR 1919.

Neither a direction nor a recommendation forms part of the adjudicator's determination (as defined in the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 2: see note 9 infra), and the refusal to give directions or make a recommendation may not be the subject of an appeal to the Tribunal: *Secretary of State for the Home Department v Hydar* (19 May 1995, unreported), IAT.

In what circumstances a recommendation should be made when an appeal is dismissed is entirely within the discretion of the adjudicator; the Tribunal has no power to give directions to adjudicators on the matter and a failure or refusal by an adjudicator cannot by itself ground an appeal to the Tribunal (*Gillegao v Secretary of State for the Home Department* [1989] Imm AR 174), or an application for judicial review (*R v Immigration Appeal Tribunal, ex p Khatib-Shahidi* [2001] Imm AR 124, CA).

The Secretary of State is entitled not to accept recommendations made by the appellate authority: *Sakala v Secretary of State for the Home Department* [1994] Imm AR 227, CA; *R v Secretary of State for the Home Department, ex p Alakesan* [1997] Imm AR 315; *R v Secretary of State for the Home Department, ex p Gardian* (1996) Times, 1 April, CA; *R v Immigration Appeal Tribunal and Secretary of State for the Home Department, ex p Maya Banu* [1999] Imm AR 161. However, a refusal to follow a recommendation was held irrational when it involved a possible breach of the appellant's human rights: *R v Secretary of State for the Home Department, ex p Arman Ali* [2000] Imm AR 134. But the Secretary of State is bound by findings of fact made by the adjudicator after hearing oral evidence (*R v Secretary of State for the Home Department, ex p Danaie* [1998] Imm AR 84, CA; *R (on the application of Bofo) v Secretary of State for the Home Department* supra (although not by his assessment of the objective conditions in the country of origin of an asylum-seeker: *Elhasoglu v Secretary of State for the Home Department* [1997] Imm AR 380)).

8 See para 192 post.

9 Immigration and Asylum Act 1999 Sch 4 para 22(1), (2). A 'determination' by the adjudicator on an appeal is the decision to allow or dismiss an appeal and the reasons for that decision: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 2. It does not include an incidental or interlocutory decision arising in the course of the appeal: *R v Immigration Appeal Tribunal, ex p Lila* [1978] Imm AR 50, DC (ruling against admissibility of evidence); *Secretary of State for the Home Department, ex p Ibrahim* [1994] Imm AR 1, IAT. But it includes a decision that an appeal had been abandoned: *Akhueomonkhan v Secretary of State for the Home Department* [1998] INLR 265, IAT; *Gremesty v Secretary of State for the Home Department* [2001] INLR 132, IAT. An adjudicator is obliged to make a formal determination in every case where he purports to dispose of the appeal: *Kouchaliev v Secretary of State for the Home Department* [1994] Imm AR 147. A determination must state what the issues are, the adjudicator's decision on them and the evidence by which he reaches his conclusion: *R v Immigration Appeal Tribunal, ex p Mahmud Khan* [1983] QB 790, [1983] 2 All ER 420, [1983] 2 WLR 759, CA. Where credibility is in issue, an adjudicator should set out with some clarity what evidence was accepted, what rejected, on what evidence no conclusion could be reached, and what evidence was irrelevant: *R v Immigration Appeal Tribunal, ex p Amin* [1992] Imm AR 367; *Yelocagi v Secretary of State for the Home Department* (2000) Times, 31 May, CA. A misdirection of fact in a determination may ground an appeal if it affects the general conclusion (*Manzeke v Secretary of State for the Home Department* [1997] Imm AR 524, CA), although a factual error on one issue does not necessarily vitiate the determination (*R v Secretary of State for the Home Department, ex p Yasun* [1998] Imm AR 215).

The proper approach for the Tribunal after granting leave to appeal on the evidence and not on a point of law is to reconsider the matter de novo on the evidence and not to review the decision as if it were the Divisional

Court: *Alam Bi v Immigration Appeal Tribunal* [1979-80] Imm AR 146, CA. However, the Tribunal would be most reluctant to interfere with a finding of primary fact by the adjudicator which was dependent on his assessment of a witness who had given oral evidence: *Borisssov v Secretary of State for the Home Department* [1996] Imm AR 524, CA; see also *Assah v Immigration Appeal Tribunal* [1994] Imm AR 519, CA; *Ikhlaiq v Secretary of State for the Home Department* [1997] Imm AR 404, CA. The Tribunal must avoid the impression of being more prepared to overturn findings of fact favourable to the immigrant than unfavourable ones: *R (on the application of Arshad) v Secretary of State for the Home Department* [2001] EWCA Civ 587. The Tribunal is in as good a position as the adjudicator to review documentary evidence of country conditions in asylum appeals and draw its own conclusions: *R v Immigration Appeal Tribunal, ex p Balendran* [1998] Imm AR 162; *Sarker v Secretary of State for the Home Department* (9 November 2000, unreported), CA.

10 Immigration and Asylum Act 1999 Sch 4 para 23(1). A decision to remit the appeal to an adjudicator is not a final determination and no appeal lies from it to the Court of Appeal: *R (on the application of the Secretary of State for the Home Department) v Immigration Appeal Tribunal* [2001] EWHC Admin 261, [2001] 4 All ER 430. The Tribunal may remit an appeal to the same or a different adjudicator: see the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 23; and para 190 post.

11 Immigration and Asylum Act 1999 s 79(1). A notice under s 79(1) must include an explanation of the Tribunal's powers under this provision and be made in such form as may be required by rules made under Sch 4 para 3 (see para 173 ante): s 79(2). Section 79(1) does not apply if leave for appeal to the Tribunal was required: s 79(3). If an appeal which has been continued by the appellant after he has been given a notice under s 79(1) is dismissed, the Tribunal may impose on the appellant, or on his representative, a penalty of an amount specified by order by the Lord Chancellor: s 79(4)-(6). The Lord Chancellor may by order make such provision as he considers appropriate as to the enforcement in England and Wales and Northern Ireland, and the payment and application, of penalties imposed under this provision, and such an order may, in particular, make provision similar to that made by the County Courts Act 1984 ss 129, 130 (see COURTS vol 10 (Reissue) para 704): Immigration and Asylum Act 1999 s 79(7), (8). At the date at which this volume states the law no such orders had been made. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante.

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

188 Determination by adjudicators and the Immigration Appeal Tribunal

NOTE 6--An adjudicator may take into account a change in circumstances in the country to which an asylum seeker would be returned: *R (on the application of Saber) v Secretary of State for the Home Department* [2007] UKHL 57, [2008] 3 All ER 97.

NOTE 10--See *R (on the application of Majeed) v Immigration Appeal Tribunal* [2003] All ER (D) 11 (Apr), CA.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/189. Determination by Special Immigration Appeals Commission and appeals from the Commission.

189. Determination by Special Immigration Appeals Commission and appeals from the Commission.

The Special Immigration Appeals Commission on an appeal to it under the Special Immigration Appeals Commission Act 1997¹: (1) must allow the appeal if it considers (a) that the decision or

action against which the appeal is brought was not in accordance with the law or with any Immigration Rules² applicable to the case, or (b) where the decision or action involved the exercise of a discretion by the Secretary of State³ or an officer, that the discretion should have been exercised differently; and (2) in any other case, must dismiss the appeal⁴. If the appeal is on asylum grounds and is one in which the Secretary of State has certified that disclosure of the evidence relied on to exclude the appellant from refugee status is not in the public interest⁵, the Commission may, instead of determining the appeal, quash the certificate and remit the appeal to an adjudicator⁶. Where an appeal is allowed, the Commission must give such directions for giving effect to the determination as it thinks requisite, and may also make recommendations with respect to any other action which it considers should be taken in the case⁷.

The Commission must record its determination and, if and to the extent it is possible to do so without disclosing information contrary to the public interest, the reasons for it⁸. It must publish its determination and send written notice of it to the special advocate and the parties⁹.

When exercising its functions, the Commission must secure that information is not disclosed contrary to the interests of national security, the international relations of the United Kingdom, the detection and prevention of crime, or in any other circumstances where disclosure is likely to harm a public interest¹⁰.

Where the Commission has made a final determination of an appeal, any party to the appeal may bring a further appeal to the Court of Appeal on any question of law material to that determination¹¹.

1 As to such appeals see para 184 ante.

2 As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395). See further para 188 note 3 ante.

3 As to the Secretary of State see para 2 ante.

4 Special Immigration Appeals Commission Act 1997 s 4(1). The Commission may review the facts on which the decision is based, but a significant degree of deference is due to the Secretary of State and to his evaluation of the degree of risk posed by the appellant to national security: *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, [2002] 1 All ER 122, [2001] 3 WLR 877.

5 Ie under the Immigration and Asylum Act 1999 s 70(4)(b): see para 180 ante.

6 Special Immigration Appeals Commission Act 1997 s 4(1A) (added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 118, 122).

7 Special Immigration Appeals Commission Act 1997 s 4(2). It is the duty of the Secretary of State and of any officer to whom directions are given to comply with them: s 4(2).

8 Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 23(1). The appropriate course is to issue one determination which enables the appellant to make sense of the decision without disclosing dangerous details: *Secretary of State for the Home Department v Rehman* [2000] 3 All ER 778, [2000] 3 WLR 1240, [2000] INLR 531, CA; affd [2001] UKHL 47, [2002] 1 All ER 122, [2001] 3 WLR 877.

9 Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 23(2). As to the special advocate see para 194 post.

10 Ibid r 3(1). Where the Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881 (as amended) require information not to be disclosed contrary to the public interest, the requirement must be construed in accordance with r 3(1): r 3(2). Subject to r 3(1), (2), the Commission must satisfy itself that the material available to it enables it properly to review decisions: r 3(3).

11 Special Immigration Appeals Commission Act 1997 s 7(1), (3)(a). In relation to a determination made in Scotland, the appeal lies to the Court of Session (s 7(3)(b)), and in Northern Ireland, to the Court of Appeal in Northern Ireland (s 7(3)(c)). An appeal may be brought only with the leave of the Commission or, if such leave is refused, with the leave of the Court of Appeal: s 7(2), (3)(a). As to delegated powers under the Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 25 see r 4; and para 194 post.

UPDATE**173-195 Appeals**

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

189 Determination by Special Immigration Appeals Commission and appeals from the Commission

TEXT AND NOTES 1-7--Repealed: Nationality, Immigration and Asylum Act 2002 Sch 7 para 22.

TEXT AND NOTES 8-11--SI 1998/1881 (as amended) replaced: Special Immigration Appeals Commission (Procedure) Rules 2003, SI 2003/1034 (amended by SI 2007/1285, SI 2007/3370).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/190. Procedure generally on appeal.

190. Procedure generally on appeal.

The appellate authority regulates the procedure to be followed in relation to the conduct of appeals¹. The overriding objective is to secure the just, timely and effective disposal of appeals, and in order to further that objective, it may give directions which control the conduct of any appeal². Notice of the date, time and place fixed for the hearing, and any directions, must be served on the appellant and his representative, if any, and on any other party³. Where an adjournment is requested⁴, the appellate authority must not adjourn unless satisfied that refusing the adjournment would prevent the just disposal of the appeal⁵.

Where a party has, without a satisfactory explanation, failed to comply with a direction or a provision of the procedure rules⁶, or failed to appear at a hearing of which he had notice⁷, and the appellate authority is satisfied in all the circumstances, including the extent of the failure and any reasons for it, that the party is not pursuing his appeal, the appellate authority may treat the appeal as abandoned⁸.

Where a party has failed to comply with a direction or with a provision of the procedure rules, the appellate authority may dispose of the appeal if, after considering all the circumstances, including the extent of the failure and any reasons for it, it is desirable to do so to give effect to the overriding objective of securing the just, timely and effective disposal of appeals⁹. The appellate authority may dispose of the appeal as follows: (1) in the case of a failure by the appellant, dismiss the appeal or, in the case of a failure by the respondent, allow the appeal, without considering its merits¹⁰; (2) determine the appeal without a hearing¹¹; or (3) in the case of a failure by a party to send any document, evidence or statement of any witness¹², prohibit that party from relying on that document, evidence or statement at the hearing¹³.

In any proceedings on an appeal, a party may act in person or be represented¹⁴. For the purposes of any appeal, an appellate authority may, by summons in the appropriate prescribed form, require any person in the United Kingdom¹⁵ to attend as a witness at a hearing of the appeal, at the time and place specified in the form¹⁶.

An appellate authority may receive oral, documentary or other evidence of any fact which appears to it to be relevant to the appeal, even though that evidence would be inadmissible in a court of law, but no person may be compelled to give any evidence or produce any document which he could not be compelled to give or produce on the trial of an action in that part of the United Kingdom in which the proceedings are conducted¹⁷. When documentary evidence is taken into consideration by an appellate authority, every party to the appeal must be given an opportunity of inspecting and taking copies of that evidence, unless it is alleged that a passport, or other travel document, certificate of entitlement, entry clearance or work permit (or any part of or entry in such a document) is a forgery and the disclosure of any matters relating to the method of detection would be contrary to the public interest¹⁸.

The burden of proof generally lies on the party making an assertion¹⁹.

Powers are given to appellate authorities to exclude members of the public from a hearing²⁰, to hear appeals in the absence of any party²¹, to hold combined hearings²², to determine appeals without a hearing²³ and to determine appeals summarily²⁴. Proceedings before an adjudicator may be transferred by the Chief Adjudicator to another adjudicator where it is not practicable without undue delay for the proceedings to be completed by that adjudicator or where for some other good reason the proceedings cannot be completed justly by that adjudicator²⁵. The transfer provisions apply with appropriate modifications to the Immigration Appeals Tribunal²⁶.

Any irregularity caused by a failure to comply with the procedure rules does not by itself render the proceedings void; however, if the appellate authority considers that any person may have been prejudiced by the irregularity, it must take any steps that it considers necessary to cure it, whether by amendment of any document, the giving of any notice or otherwise²⁷.

Written notice of the determination of the adjudicator or Tribunal is to be sent to every party and to the appellant's representative²⁸.

Findings of fact reached by the appellate authority after hearing oral evidence are generally binding on the Secretary of State²⁹.

Provision is made in the immigration procedure rules for applications for bail under the Immigration Act 1971³⁰.

1 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, rr 28, 30(1). As to the giving of directions as to the practice and procedure to be followed see the Immigration and Asylum Act 1999 Sch 4 para 5; and para 173 ante.

2 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 30(2). Directions may be oral or in writing, and notice of written directions must be served on the appellant or his representative (if he has one) and any other party: r 30(3). Directions may in particular: (1) relate to any matter concerning the preparation for a hearing and may specify the length of time allowed for anything to be done; (2) specify the place at which the appeal is to be heard; (3) provide for (a) particular matters to be dealt with as preliminary issues; (b) a pre-hearing review to be held; (c) the furnishing of any particulars which appear to be requisite for the determination of the appeal; (d) whether there should be a hearing of the appeal; (e) the witnesses, if any, to be heard; (f) the manner in which any evidence may be given; and (g) in the case of the Tribunal, times to be prescribed within which leave must be sought to submit any evidence or call any witnesses: r 30(4)(a)-(c). The authority is not required to list an appeal at the hearing centre which is closest or most convenient for the appellant, but should transfer an appeal to a different hearing centre where there is good reason: *R v Secretary of State for the Home Department, ex p Semaane* [1998] Imm AR 48 (refusal to list appeal in London not unreasonable where appellant had means and had sought transfer from Glasgow); cf *Adedayo v Secretary of State for the Home Department* (16 April 1997, unreported), IAT (hearing should not be listed in a place to which an appellant with no means will not be able to travel). 'Particulars' does not extend to documents and the appellate authority has no power to order discovery: *R v An Adjudicator, Mr RG Care, ex p Secretary of State for the Home Department* [1989] Imm AR 423; but see note 16 infra for powers in relation to a witness summons.

Directions may also: (i) require any party to file (A) statements of evidence to be called at the hearing, specifying in what respect the services of an interpreter will be required; (B) a paginated and indexed bundle of all the documents which will be relied on at the hearing; (C) a skeleton argument summarising the submissions to be made and citing authorities to be relied on; (D) a time estimate; (E) a list of witnesses; and (F) a chronology of events; (ii) limit the number or length of documents produced, the length of oral submissions, the time allowed for examination of witnesses and the issues to be addressed at the hearing; and (iii) facilitate the

holding of combined hearings: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 30(4) (d)-(f). Combined hearings are heard under r 42: see the text and note 21 *infra*.

A party must provide to every other party a copy of any document which he is directed to file under the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 30(4): r 30(5).

In an appeal in which a party is unrepresented, the appellate authority may not give directions under rule 30 where it is necessary for the party to comply, unless it is satisfied that he is able to comply with those directions: r 30(6).

The parties to the appeal are the appellant and the respondent: r 29(1). Where, in the case of a claim for asylum, the United Kingdom representative of the United Nations High Commissioner for Refugees gives written notice to the appellate authority at any time during the course of an appeal that he wishes to be treated as a party, he must be so treated from the date of the notice: r 29(2).

3 See *ibid* r 13 (adjudicator appeals), r 20(2) (Tribunal appeals).

4 Where a party applies for an adjournment of a hearing, he must, where practicable, notify all other parties of the application and: (1) show good reason why an adjournment is necessary; (2) establish any fact or matter relied on in support of the application; and (3) offer a new date for the hearing: *ibid* r 31(2).

5 *Ibid* r 31(1). The test for an adjournment is one of necessity, not desirability: *R v Secretary of State for the Home Department, ex p Bogou* [2000] Imm AR 494; *R v Special Adjudicator, ex p Kotovas* [2000] Imm AR 26. But considerations of fairness are important in the decision to adjourn: *R (on the application of Dirisu) v Immigration Appeal Tribunal* [2001] EWHC Admin 970; *R v Secretary of State for the Home Department, ex p Ghaly* (27 June 1996, unreported), QBD; see also *R v Kingston upon Thames Justices, ex p Martin* [1994] Imm AR 172, DC. Where a party wishes to rely on evidence or arguments not previously notified, fairness to the other party will normally require an adjournment: *Macharia v Immigration Appeal Tribunal* [2000] INLR 156, CA.

Where a hearing is adjourned, the appellate authority may give any further directions it considers necessary for the future conduct of the appeal: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 31(3). Written notice of the date, time and place of the adjourned hearing is to be sent to the parties and their representatives, except where the representative is acting for the Secretary of State, an immigration officer or entry clearance officer, or the United Kingdom Representative of the United Nations High Commissioner for Refugees: r 31(4). As to the Secretary of State see para 2 *ante*. For adjournments generally see also *Practice Direction* [2000] Imm AR 435; *Practice Direction* [2001] Imm AR 172.

The appellate authority should not adjourn a case *sine die* to await long-term developments in an asylum appeal, which is concerned with status determination and not with prognostication on future events: see *R (on the application of the Secretary of State for the Home Department) v Immigration Appeal Tribunal* [2001] EWHC 1067 (Admin).

6 *Ibid* the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333 (as amended).

7 *Ibid* in accordance with *ibid* r 13 (adjudicator hearings), r 20(2) (Tribunal hearings) or r 31(4) (adjourned hearings).

8 *Ibid* r 32(1). Mere non-appearance or non-compliance with directions is not sufficient for an appeal to be treated as abandoned; the rule is meant only for cases where an appellant clearly has no intention of pursuing an appeal: *Akhuemonkhan v Secretary of State for the Home Department* [1998] INLR 265, IAT; *R v Immigration Appeal Tribunal and Lord Chancellor, ex p Ali* [1998] INLR 526. Where the appellate authority treats an appeal as abandoned, it must send a notice to the parties informing them that the appeal is being treated as abandoned, and include the reasons: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 32(2). See also *Gremesty v Secretary of State for the Home Department* [2001] INLR 132, IAT.

9 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 33(1) (amended by SI 2001/4014).

10 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 33(2)(a). The power to determine an appeal without consideration of the merits, or without a hearing, for non-compliance with directions, should be exercised with extreme caution: *Meflah v Secretary of State for the Home Department* [1997] Imm AR 555; *R v Immigration Appeal Tribunal, ex p S* [1998] Imm AR 252.

11 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 33(2)(b). As to determination without hearing see r 43; and the text and note 22 *infra*.

12 Any notice or other document required or authorised under the procedure rules to be sent or given to any person or authority may be delivered or sent by post to an address, or sent by fax to a fax number, specified by the person or authority to whom the notice or document is directed: *ibid* r 46(1). If a notice or document is sent or given to a person appearing to represent a party, it is deemed sent or given to that party: r 46(2). A party

must inform the appellate authority of his address for service and of any changes to that address: r 47(1). Until a change of address is notified, any document served on him at the most recent address he has given to the appellate authority is deemed to have been properly served: r 47(2). The same provisions apply to a party's representative: see r 47(3), (4). A notification of a change in address or representative to the immigration authorities is not enough, since they have no duty to inform the appellate authority: *R v Secretary of State for the Home Department, ex p Hannach* [1997] Imm AR 162; *Ladipo v Secretary of State for the Home Department* [1997] Imm AR 51, CA. An applicant has no redress if he gives the wrong address for service and a notice of hearing is validly sent to that address: *Hassan v Secretary of State for the Home Department* [1994] Imm AR 482, CA. But a notice not properly served cannot give rise to a valid dismissal of an appeal on the ground that it was out of time or the appellant did not appear: *R v Secretary of State for the Home Department, ex p Kondo* [1992] Imm AR 326. As to correct delivery to the Tribunal see *R v Immigration Appeal Tribunal and an Immigration Appeal Adjudicator, ex p Secretary of State for the Home Department* [1990] Imm AR 166, DC; *Shaffi v Secretary of State for the Home Department* [1990] Imm AR 468.

Any notice or document that is sent is, unless the contrary is proved, deemed to have been received: (1) where the notice or document is sent by post to a place within the United Kingdom, on the second day after it was sent; (2) where the notice or document is sent by post to a place outside the United Kingdom, on the twenty-eighth day after it was sent; and (3) in any other case, on the day on which the notice or document was sent: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 48(2). Notices sent to the appellate authority are deemed to have been received on the day on which they are received, whether by post, by hand or by fax, by the authority, ie, by any person employed as a clerk to that authority: r 48(3), (4), (5). Where the period in question, being a period of ten days or less, would include a Saturday, a Sunday, a bank holiday, Christmas Day, 27-31 December or Good Friday, that day is excluded: r 48(8). 'Bank holiday' means a day that is specified in, or appointed under, the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321) as a bank holiday: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 48(9). In any other case, where the period would end on an excluded day, service will be in time if effected on the next day which is not excluded: r 48(7).

13 Ibid r 33(2)©.

14 Ibid r 35(1). A party may be represented: (1) in the case of a person appealing against an immigration decision, by any qualified person (see the Immigration and Asylum Act 1999 s 84; and para 170 ante); (2) in the case of the Secretary of State or any officer, by an authorised advocate or any officer of the Secretary of State; and (3) in the case of the United Kingdom Representative of the United Nations High Commissioner for Refugees in an asylum appeal, by a person appointed by him: r 35(1). Each party has a duty to maintain contact with his representative until the appeal is finally determined, and notify the representative of any change of address: r 35(3). Where a representative under head (1) supra ceases to act, he and the party he was representing must forthwith notify the appellate authority and any other party of that fact, and of the name and address of any new representative, if known; and until the appellate authority is notified that the first representative has ceased to act, any document served on the first representative is deemed to be properly served on the party he was representing: r 35(4), (5). Where a representative begins to act for a party, he must forthwith notify the appellate authority of that fact: r 35(6). A person representing a party may do anything relating to the proceedings that the person whom he represents is required or authorised to do: r 35(2).

15 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

16 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 36(1), (2). For the form for a witness summons see the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, Schedule Form 6. Subject to the provisions of r 37(2) (see note 17 infra), such person may be required at the hearing to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the appeal: r 36(1). A person should not be required to travel in response to a summons unless the necessary expenses of his attendance are paid: r 36(2). A person who fails without reasonable excuse to attend a hearing and give evidence or produce documents before an adjudicator or the Tribunal on being required to do so under the rules of procedure is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: Immigration and Asylum Act 1999 s 58, Sch 4 para 8. As to the standard scale see para 81 note 2 ante. For the use of witness summonses see *Sharufa Begum v Entry Clearance Officer, Dhaka* [1987] Imm AR 271 (Secretary of State's representative may apply to call a sponsor as a witness, although it is impossible to envisage circumstances where the discretion should be exercised to grant such an application). See also *Kesse v Secretary of State for the Home Department* [2001] Imm AR 366, CA (although the appellate authority has the power to take evidence of its own motion and against the wishes of the parties, it should in general be reluctant to do so).

17 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 37(1), (2). The appellate authority may require evidence to be given on oath or affirmation, or without either: r 37(3). Hearsay evidence may be relied on (so long as its nature is taken into account): *R v Immigration Appeal Tribunal, ex p Lulu Miah* [1987] Imm AR 143. The appellate authorities are entitled to accept as evidence the notes of any interview without the interpreter's notes (*Manjit Singh v Entry Clearance Officer, New Delhi* [1986] Imm AR 219), and in the absence of oral evidence from the immigration officer who made them (*Poudel v Secretary of State for the Home Department* [1991] Imm AR 567, IAT); similarly with reports from village visits (*Visa Officer, Islamabad v*

Mohammed Altaf [1979-80] Imm AR 141). But an interview record should be approached with caution where there has been defective, leading or confrontational questioning: *R v Secretary of State for the Home Department, ex p Akdogan* [1995] Imm AR 176; *R v Immigration Appeal Tribunal, ex p Hoque* [1988] Imm AR 216, CA; *Uruthiran v Secretary of State for the Home Department* (8 February 2000, unreported), IAT.

The appellate authority should give the appellant a chance to comment on any adverse material in the evidence: *Ahmed v Secretary of State for the Home Department* [1994] Imm AR 457, CA; but see *R v Immigration Appeal Tribunal, ex p Williams* [1995] Imm AR 518; *Sahota v Immigration Appeal Tribunal* [1995] Imm AR 500 (the obligation does not extend to obvious discrepancies in matters central to the appellant's case and already drawn to his attention in the refusal letter). As to whether an appellate authority should draw the parties' attention to relevant evidence not cited see *R v Secretary of State for the Home Department, ex p Fortunato* [1996] Imm AR 366; *Norbert* [1995] Imm AR 64; *R (on the application of Kang) v Immigration Appeal Tribunal* (6 October 2000, unreported), QBD.

However, the powers of the appellate authorities to control their own procedure are limited to those vested in them by statute and subordinate legislation, and they have no powers analogous to the inherent powers of the High Court, to be exercised in the interests of fairness: *R v An Adjudicator, Mr RG Care, ex p Secretary of State for the Home Department* [1989] Imm AR 423. The appellate authority has a reasonable inquisitorial function, but there is a fine line between legitimate inquiry and stepping into the respondent's shoes: *Bahar v Immigration Officer, Heathrow* [1988] Imm AR 534; *R v Special Adjudicator, ex p Demeter* [2000] Imm AR 424.

Foreign law is a matter which should be determined by expert evidence: *R v Secretary of State for the Home Department, ex p Bradshaw* [1994] Imm AR 359; *Secretary of State for the Home Department v Tikhonov* [1998] INLR 737, IAT. An adjudicator is entitled to take into account, without the need for expert evidence, a cultural or religious tradition to which both parties to a marriage have indicated they adhere: see *Kandiya v Immigration Appeal Tribunal* [1990] Imm AR 377, CA. However, if expert evidence is adduced, it should be treated with respect: *Karanakaran v Secretary of State for the Home Department* [2000] 3 All ER 449, [2000] Imm AR 271, CA; *Tarlochan Singh v Secretary of State for the Home Department* [2000] Imm AR 36.

18 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 38; Immigration and Asylum Act 1999 Sch 4 para 6. See note 21 infra.

19 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 39. See *Baskurt v Immigration Appeal Tribunal* [1987] Imm AR 511, CA (burden on appellant to prove marriage genuine even in a deportation appeal). Previous successful applications turning on the same facts are strong (but not conclusive) evidence: *Visa Officer, Islamabad v Sarwar Begum* [1986] Imm AR 192 (disputed relationship). The relevant standard of proof in non-asylum or human rights cases is the balance of probabilities: see *R v Immigration Appeal Tribunal, ex p Mehra* [1983] Imm AR 156; *Tahir v Immigration Appeal Tribunal* [1989] Imm AR 98, CA (decisions of the Immigration Appeal Tribunal quashed because it had applied a standard of proof higher than the balance of probabilities); and *Azid v Entry Clearance Officer, Dhaka* [1991] Imm AR 578 (decision of adjudicator remitted after use of 'unconvincing' and 'satisfied certainty' to describe the evidence). Where the Secretary of State asserts that documents relied on by an appellant are false, it is for him to prove it (*R v Immigration Appeal Tribunal, ex p Shen* [2000] INLR 389); and where the Secretary of State alleges fraud, proof to a high degree of probability is required (*Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL).

In asylum cases, where the appellant must show a well-founded fear of persecution, it is inappropriate to apply a test of balance of probabilities, and it will be sufficient if a reasonable likelihood or real risk of persecution is established: *R v Secretary of State for the Home Department, ex p Sivakumaran* [1988] AC 958, [1988] 1 All ER 193, [1988] 2 WLR 92, HL. For this purpose all the evidence must be weighed for what it is worth: *Karanakaran v Secretary of State for the Home Department* [2000] 3 All ER 449, [2000] Imm AR 271, CA. The same standard applies to cases where the appellant asserts that his removal will breach a right guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969): *Secretary of State for the Home Department v Kacaj* [2002] Imm AR 213, [2001] INLR 354, IAT (starred).

20 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 40. Hearings must normally take place in public: r 40(1). But all members of the public must be excluded if the appellate authority is considering an allegation of forgery of documents under the Immigration and Asylum Act 1999 Sch 4 para 6 (see note 21 infra): Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 40(2). The authority may exclude any member of the public, or the public generally, from a hearing or part of a hearing where in its opinion, it is necessary in the interests of morals, public order or national security, or in the interests of minors, or for the protection of the private life of the parties; or where in special circumstances publicity would prejudice the interests of justice, but exclusion must be only to the extent strictly necessary in the authority's opinion: r 40(3). Nothing in r 40 prevents a member of the Council on Tribunals or of its Scottish Committee from attending a hearing in that capacity: r 40(4).

21 Ibid r 41. In particular, the appellate authority may, where it appears just to do so, hear an appeal in the absence of a party if the authority is satisfied that: (1) he is not in the United Kingdom; (2) he is suffering from a communicable disease or from a mental disorder; (3) by reason of illness or accident he cannot attend the hearing; (4) it is impracticable to give him notice of the hearing and no person is authorised to represent him at

the hearing; (5) he has notified the appellate authority that he does not wish to attend the hearing; or (6) notice of the date, time and place of the hearing or adjourned hearing has been given and the absent party has not furnished the appellate authority with a satisfactory explanation of his absence: r 41(1)-(3). Where the appellate authority hears an appeal or proceeds with a hearing in the absence of a party, it must determine the appeal on the evidence which has been received: r 41(4). References to a party include references to his representative: r 41(5). When the appellate authority hears an appeal under the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 41 it must set out in its determination that the requirements of the procedure rules (and where appropriate the notices regulations: see para 187 ante) have been complied with, giving reasons: *Deb v Secretary of State for the Home Department* [1990] Imm AR 14, IAT. A person who has lost the opportunity to have an oral hearing or to be present at the hearing of his appeal solely through the default of his own legal advisers cannot challenge the determination as procedurally improper or in breach of the rules of natural justice: *Al-Mehdawi v Secretary of State for the Home Department* [1990] 1 AC 876, [1989] 3 All ER 843, [1990] Imm AR 140, HL, not following *R v Diggines, ex p Rahmani* [1985] QB 1109, [1985] 1 All ER 1073, CA; see *Jemel v Immigration Appeal Adjudicator* [1989] Imm AR 496, CA (fault, or part of the fault, for non-attendance at the hearing lay with the appellant personally: no denial of natural justice). The principle expressed in *Al-Mehdawi v Secretary of State for the Home Department* supra has no application to asylum cases: *Haile v Immigration Appeal Tribunal* [2001] EWCA Civ 663. The appellate authority should not proceed in a party's absence if the hearing is described as a pre-hearing review: *Singh v Secretary of State for the Home Department* [1993] Imm AR 382. But the adjudicator is not obliged to accept any explanation for non-attendance: see *Deen-Koroma v Immigration Appeal Tribunal* [1997] Imm AR 242, CA (adjudicator's decision to continue with hearing of an appeal upheld despite his receipt of a medical certificate in respect of non-attending party). See also *Practice Direction* [2001] Imm AR 172.

The rules apply equally to both parties, and the appellate authority may not adjourn for the respondent to be present if there has been no explanation of that party's absence: *R v Special Adjudicator, ex p Demeter* [2000] Imm AR 424. For guidance on how the appellate authority is to proceed in the absence of a representative of the Secretary of State, see *MNM v Secretary of State for the Home Department* [2000] INLR 576, IAT (starred).

Where on an appeal it is alleged that a passport or other travel document, certificate of entitlement, entry clearance or work permit (or any part of it or entry in it) on which a party relies is a forgery, and that the disclosure to that party of any matters relating to the method of detection would be contrary to the public interest, the adjudicator or Tribunal must arrange for the hearing to take place in the absence of that party and his representatives while the allegation that such disclosure would be contrary to the public interest is inquired into, and for such further period as appears necessary to ensure that there is no disclosure contrary to the public interest: Immigration and Asylum Act 1999 Sch 4 para 6.

22 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 42. The power is to be exercised where it appears that some common question of law or fact arises in two or more appeals, or they relate to decisions or actions taken in respect of persons who are members of the same family, or for some other reason it is desirable to do so: r 42. The parties must be given the opportunity of being heard: r 42. The appellate authority must give separate consideration to each appellant: *Yau Yak Wah v Home Office* [1982] Imm AR 16, CA; *R v Immigration Appeal Tribunal, ex p Hamida Begum* [1988] Imm AR 199.

23 See the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 43; and para 191 post. The appellate authority should not determine an appeal without an oral hearing when there is documentary evidence which one party has not seen and had an opportunity to comment upon: *Immigration Officer, Heathrow v Ekinici* [1989] Imm AR 346.

24 See the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 44; and para 191 post.

25 Ibid r 45(1). Where proceedings are transferred there must be a hearing de novo before the second adjudicator: *Hamida Khatun v Entry Clearance Officer, Dhaka* [1988] Imm AR 138. See also *R v Immigration Appeal Tribunal, ex p Kandiah* [1991] Imm AR 431, where the Chief Adjudicator transferred an appeal to another adjudicator for rehearing after the first had fallen ill before giving reasons for allowing the appeal. This action was upheld because the appeal had not been 'disposed of' by the first adjudicator.

Where any proceedings are transferred to another adjudicator in accordance with the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 45(1): (1) any notice or other document which is sent or given to or by the adjudicator from whom the proceedings were transferred is deemed to have been sent or given to or by the adjudicator to whom the appeal is transferred; and (2) any adjudicator to whom an appeal is transferred has power to deal with it as if it had been commenced before him: r 45(2).

26 Ibid r 45(3). Where the Secretary of State notifies the Chief Adjudicator or President that the Immigration and Asylum Act 1999 s 78 (see para 176 ante) applies, the proceedings are to be transferred instead to the Special Immigration Appeals Commission: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 45(4).

27 Ibid r 49(1), (2). See *Akewushola v Secretary of State for the Home Department* [2000] 2 All ER 148, [2000] 1 WLR 2295, CA (Tribunal had no power to rescind its own or another Tribunal's decision), applied in *R v*

Immigration Appeal Tribunal, ex p Wanyoike [2000] Imm AR 389; and *R (on the application of Nuredini) v Immigration Appeal Tribunal* [2002] EWHC 1582 (Admin), [2002] All ER (D) 126, Admin Ct, per curiam (Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 49(2) is not apt to cover the situation where the person prejudiced by the irregularity is the person who had caused that irregularity by failing to comply with the requirements of the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333); but see the appellate authority's powers of review in the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, rr 19, 27(5) (see paras 191-193 post). Clerical mistakes in any determination or notice of determination, or errors arising therein from any accidental slip or omission, may at any time be corrected and any correction made to, or to a record of, a determination is deemed to be part of that determination or record and written notice of it must be given as soon as practicable to every party: r 50(1). The Tribunal may, after consulting the adjudicator concerned, correct errors in a determination given by an adjudicator and any correction made to, or to a record of, a determination is deemed to be part of that determination or record and written notice of it must be given as soon as practicable to every party and to the adjudicator: r 50(2).

28 Ibid r 15 (substituted by SI 2001/4014) (adjudicator), Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 25 (Tribunal). As to the adjudicator's determinations see para 191 post. As to the manner in and detail with which an adjudicator should set out his reasoning, conclusion and the facts he relies upon in his determination see *Kandiya and Khan v Immigration Appeal Tribunal* [1990] Imm AR 377, CA, following *R v Immigration Appeal Tribunal, ex p Mahmud Khan* [1983] QB 790, [1983] 2 All ER 420, [1982] Imm AR 134, CA (need for clear findings to enable appellant to know why appeal failed). See also *R (on the application of Muchai) v Secretary of State for the Home Department* [2001] EWCA Civ 932 (importance of clear findings in asylum cases); *R v Immigration Appeal Tribunal, ex p Yang* [1987] Imm AR 568 (should include an assessment of witnesses' credibility); *R v Immigration Appeal Tribunal, ex p Amin* [1992] Imm AR 367; *R v Immigration Appeal Tribunal, ex p Hussain* [1992] Imm AR 212. As to the duty of the Tribunal to give adequate reasons for its decision, see *Singh v Secretary of State for the Home Department* 1999 SC 357, Inner House. Where an adjudicator determines that an appeal should be decided on an issue not argued before him, he should afford the parties an opportunity to make submissions to him on that issue before giving his determination: *Moussavi v Secretary of State for the Home Department* [1986] Imm AR 39; *R v Immigration Appeal Tribunal, ex p Sui Rong Suen* [1997] Imm AR 355.

29 *Secretary of State for the Home Department v Danaie* [1998] Imm AR 84, CA; *R (on the application of Bofo) v Secretary of State for the Home Department* [2002] EWCA Civ 44, [2002] 1 WLR 1919. This applies unless the appellate authorities' findings are themselves unsustainable, but does not apply to the authority's assessment of country conditions in asylum appeals, on which the Secretary of State is as well placed as the authority to reach conclusions: *Elhasoglu v Secretary of State for the Home Department* [1997] Imm AR 380, CA.

30 See *ibid* r 34; the Immigration Act 1971 s 4(2), Sch 2 paras 22, 29 (as amended); and paras 213-214 post.

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

190 Procedure generally on appeal

NOTES 3, 7, 9--SI 2000/2333 does not create an irrebuttable presumption that a notice once served will also be considered to have been received and so in a case where an applicant fails to attend an appeal hearing and asserts that he never received the notice, the tribunal should not immediately dismiss the appeal, but should allow the applicant to put forward evidence which it could then weigh up in the normal way and decide whether to grant the appeal: *R (on the application of Karagoz) v Immigration Appeal Tribunal* [2003] All ER (D) 237 (May).

NOTE 5--*R (on the application of the Secretary of State for the Home Department)*, cited, reported at [2002] Imm AR 491. See *R (on the application of Rahmani) v Secretary of State for the Home Department* [2002] Imm AR 627.

NOTE 10--See *R (on the application of Zaier) v Immigration Appeal Tribunal* [2003] All ER (D) 153 (Jul), CA (failure of Secretary of State to interview asylum applicant where application could be determined without interview not grounds for exercise of power).

NOTE 20--The Council on Tribunals and the Scottish Committee of the Council on Tribunals are abolished and replaced by the Administrative Justice and Tribunals Council: see Tribunals, Courts and Enforcement Act 2007 ss 44, 45, Sch 7; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57A.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/191. Procedure on appeal to adjudicator.

191. Procedure on appeal to adjudicator.

Where a person appealing against an immigration decision ('the appellant') makes an appeal within the United Kingdom¹, notice of appeal must be given not later than ten days after the notice of the decision against which the appellant is appealing was received². Where the appellant makes an appeal outside the United Kingdom, notice of appeal must be given: (1) in a case where the appellant is in the United Kingdom when the decision is made, not later than 28 days after his departure from the United Kingdom; or (2) in a case where the appellant is not in the United Kingdom when the decision is made, not later than 28 days after the notice of the decision was received³. Where any notice of appeal is not given within the appropriate time limit, it is nevertheless treated for all purposes as having been given within that time limit if the person to whom it was given is satisfied that, because of special circumstances, it is just for the notice to be treated in that way⁴.

An appeal to an adjudicator is made by sending to the person, and at the address, specified in the notice of the decision which is the subject of the appeal, a notice of appeal in the appropriate prescribed form⁵. The notice of appeal must: (a) set out the grounds for the appeal⁶; (b) state the name and address of the appellant and the name and address of his representative (if he has one)⁷; and (c) be signed by the appellant or his representative (if he has one)⁸. The appellant must attach to the notice of appeal a copy of any document which informed him of the decision against which he is appealing and any reasons for that decision, and, where a notice has been served on the appellant requiring him to state any additional grounds he has or may have for wishing to enter or remain in the United Kingdom⁹, a statement form, on which such additional grounds may be stated, whether or not that form has been completed¹⁰.

When the respondent alleges that the appellant is not entitled to appeal¹¹, or that the notice of appeal was not given within the period specified above, the respondent must send to the adjudicator with the required documents¹², and to the appellant and his representative (if he has one), a written statement setting out the allegation, the reasons for it and any relevant facts relating to it¹³. Where a written statement has been so given, the adjudicator may, and at the request of the respondent must, determine the validity of the allegation as a preliminary issue¹⁴. Where the adjudicator determines as a preliminary issue that the notice of appeal was not given within the specified period, then, except where a deportation order is in force in respect of the appellant, the adjudicator may allow the appeal to proceed if he is satisfied that by reason of special circumstances, it is just to do so¹⁵.

A hearing must be conducted to determine the appeal¹⁶, unless: (i) the appellate authority¹⁷ has decided, after giving every other party an opportunity of replying to any representations submitted in writing by or on behalf of the appellant, to allow the appeal; (ii) the appellate authority is satisfied that the appellant, except where the appellant is the Secretary of State or an officer, is outside the United Kingdom or that it is impracticable to give him notice of a

hearing and, in either case, that no person is authorised to represent him at a hearing¹⁸; (iii) a preliminary issue has arisen and, the appellant having been given an opportunity to submit a written statement rebutting the respondent's allegation, the appellant has not submitted such a statement, or the appellate authority is of the opinion that matters put forward by the appellant in such a statement do not warrant a hearing; (iv) the appellate authority is satisfied, having given every party an opportunity to make representations and having regard to the material before it, and the nature of the issues raised, that the appeal could be so disposed of justly¹⁹; (v) no party has requested a hearing; or (vi) the appellate authority is proceeding in consequence of a failure to comply with the Immigration Rules or a direction given under them²⁰. Further, where it appears to the appellate authority that the issues raised in an appeal have been determined, in the case of an appeal before an adjudicator, by the same or another adjudicator or by the Tribunal, or, in the case of an appeal before the Tribunal, by the Tribunal, in previous proceedings to which the appellant, or a family member²¹, was a party, on the basis of facts which did not materially differ from those to which the appeal relates, the appellate authority may determine the appeal summarily without a hearing²².

Written notice of the adjudicator's determination must be sent to every party and the appellant's representative (if he has one)²³, except in relation to a claim for asylum²⁴.

Where a party receives written notice of a determination to which there is no right of appeal to the Tribunal, he may apply to the Chief Adjudicator²⁵ to review that determination on the ground that it was wrongly made as a result of an administrative or procedural error by the adjudicator²⁶. In addition, the Chief Adjudicator may, of his own motion, if satisfied that the interests of justice so require, not later than ten days after written notice of the determination has been sent to the parties or to the Secretary of State²⁷, review that determination on the ground that it was wrongly made as a result of an administrative or procedural error by the adjudicator²⁸. The Chief Adjudicator may confirm²⁹ or set aside³⁰ the determination and direct a rehearing of the appeal³¹.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, rr 5, 6(1), (3). The period of ten days excludes Saturdays, Sundays, bank holidays, Christmas Day, 27-31 December and Good Friday: r 48(8), (9). Where the time provided for appealing is over ten days and ends on an excluded day, the act is completed in time if it is done on the next day which is not excluded: r 48(7).

3 Ibid r 6(2). Notice may be delivered or sent by post or by fax to the address or number specified by the person or authority to whom it is directed: r 46(1). If sent by post to the appellate authority, it is deemed to have been received on the day on which it was received by that authority: r 48(3). A notice of appeal sent by post or fax to an address or fax number specified on the notice is deemed to have been given on the day it was received at that address or fax number: r 48(4). Whether or not the notice of appeal was given within the time limit specified, the respondent must send to an adjudicator, the appellant and the appellant's representative: (1) the notice of appeal, together with any documents attached to it under r 8 (see the text and notes 5-10 infra); (2) any supplementary grounds of refusal; (3) any variation of the grounds of appeal; (4) any notes of an asylum interview; and (5) any other document (except statutory or public materials) referred to in the decision which is the subject of appeal: r 10(1). 'Statutory or public materials' means an enactment or a provision made under an enactment, a convention or other provisions of a similar nature or other documents which are published or publicly available: r 10(2).

4 Ibid r 7(1). See *R v Immigration Appeal Tribunal, ex p Singh* (1975) Times, 22 October. Thus, a notice of appeal can be given and accepted out of time without reference to the appellate authorities. However, this does not confer jurisdiction on the appellate authorities where the applicant purports to appeal after the expiry of his leave to remain. Delay by solicitors in sending an application could constitute special circumstances: *Cheema v Secretary of State for the Home Department* [1982] Imm AR 46, CA. See also *R v Immigration Appeal Tribunal, ex p VM Mehta* [1976] Imm AR 174, CA.

Additionally, an adjudicator may extend time for giving notice of appeal: see Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 7(2).

5 Ibid r 8(1). In any case where an appellant is in custody, such service may be on the person having custody of him: r 8(2). For the appropriate prescribed form see Schedule Forms 1-3. Non-compliance with the

requirements of the rules does not necessarily invalidate a notice of appeal: *R v Immigration Appeal Tribunal, ex p Jeyanthan* [1999] 3 All ER 231, [2000] 1 WLR 354, CA.

6 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 8(3). A notice of appeal which objects to the destination to which it is proposed to remove the appellant (ie under the Immigration and Asylum Act 1999 s 59, s 63 or s 67: see para 178 ante) must specify an alternative destination: *R v Adjudicator, ex p Umeloh* [1991] Imm AR 602. Where the appeal is made under the Immigration and Asylum Act 1999 s 59 (see para 174 ante), in relation to a family visitor appeal, the appellant must specify in, or attach to, the notice of appeal all matters he wishes to be considered for the purposes of the appeal: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 8(4). Once the respondent has sent in the documents required for the appeal (see note 3 supra), the grounds of the appeal may be varied by the appellant with the leave of the adjudicator: r 11(1), (2). Except in the case of an appeal under the Immigration and Asylum Act 1999 s 65 (as amended) (see para 179 ante) or s 69 (see para 180 ante), the adjudicator must not give leave to vary the grounds of appeal unless he is satisfied that because of special circumstances, it is just to allow the variation: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 11(3).

7 Ibid r 8(5).

8 Ibid r 8(6).

9 Ie under the Immigration and Asylum Act 1999 s 74(4): see para 185 ante.

10 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 8(7). Where the appellant is treated as appealing on additional grounds (see the Immigration and Asylum Act 1999 s 77(2); and para 185 ante), he must serve on the person, and at the address, specified in the supplementary grounds of refusal, any variation of his grounds of appeal not later than five days after he received the supplementary grounds of refusal: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 9.

11 Ie: (1) by virtue of a provision of the Immigration and Asylum Act 1999 specified by the respondent; (2) by virtue of a provision of the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended) specified by the respondent; (3) by reason that a passport or other travel document, certificate of entitlement, entry clearance or work permit on which the appellant relies is a forgery or was issued to, and relates to, another person; or (4) by reason that notice of appeal has not been signed by the appellant or by his representative (if he has one) or, in the case of an appellant who is a minor or who is for any reason incapable of acting, by any person acting on his behalf: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 12(1)(a). It is for the appellate authority, and not the Secretary of State, to decide whether there is an appeal (*Secretary of State for the Home Department v Ken'aa* [1990] Imm AR 544); but it is for the Secretary of State, not the adjudicator, to decide (subject to judicial review) whether representations amount to a fresh claim for asylum which gives rise to a further right of appeal: *R v Secretary of State for the Home Department, ex p Ravichandran (No 3)* [1997] Imm AR 74; *Ward v Secretary of State for the Home Department* [1997] Imm AR 236, CA; *Secretary of State for the Home Department v Boybeyi* [1997] Imm AR 491; *R v Immigration Appellate Authority, ex p Secretary of State for the Home Department* [1998] Imm AR 52.

12 See the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 10; and note 3 supra.

13 Ibid r 12(1)(b). The appellant may send a written statement in reply to the respondent's statement to the adjudicator and the respondent: r 12(2).

14 Ibid r 12(3). At a hearing before the adjudicator in accordance with r 12(3), the respondent must be given an opportunity to explain the allegation contained in his statement and any matters relating to it, and the appellant must be given an opportunity to respond to the matters raised: r 12(4).

15 Ibid r 12(5). Where the adjudicator so allows the appeal to proceed, the notice of appeal is treated for all purposes as if it had been given in accordance with r 6 (see the text and notes 1-3 supra): r 12(6).

16 Ibid r 14(1). A hearing may be conducted or evidence given or representations made by video link or by other electronic means: r 14(2). Notice of the date, time and place fixed for the hearing and any directions given (see r 30) must be served on the appellant or his representative (if he has one) and any other party: r 13. The appellate authority is not required to list a hearing at the hearing centre closest to or most convenient for the appellant, but should transfer an appeal where there is good reason: *R v Secretary of State for the Home Department, ex p Semaane* [1998] Imm AR 48. An appellant has no legitimate expectation that a hearing date will not be brought forward provided it is not changed without reasonable notice: *R v Immigration Appeal Tribunal, ex p Shandar* [2000] Imm AR 181.

17 'Appellate authority' means the Tribunal or the adjudicator: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 2(1).

18 Before proceeding under this rule, the adjudicator should obtain an unambiguous declaration from any representative on the record either that their instructions had been withdrawn or that they had no instructions: *R v Digginis, ex p Rahmani* [1986] AC 475, [1986] Imm AR 195, HL.

19 Where credibility is in issue, this power should not be used: *R v Immigration Appeal Tribunal, ex p S* [1998] Imm AR 252. See also *Gioshev v Secretary of State for the Home Department* (24 November 1997, unreported), IAT.

20 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 43(1). The power to determine an appeal without a hearing for non-compliance with directions should be exercised with extreme caution and will rarely, if ever, be appropriate if the party in default is present: *Meflah v Secretary of State for the Home Department* [1997] Imm AR 555, IAT; *R v Immigration Appeal Tribunal, ex p S* [1998] INLR 168. Where, in a family visitor appeal (see para 174 ante), the appellant has not paid the fee for a hearing at the time he made the appeal, the appellate authority must determine the appeal without a hearing: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 43(2). At the date at which this volume states the law no such fee is payable: see the Immigration Appeals (Family Visitor) Regulations 2002, SI 2002/1147, reg 3. The appellate authority must send written notice of the determination to every party, and every party's representative, except where the representative is acting for the Secretary of State, an officer or the United Kingdom Representative of the United Nations High Commissioner for Refugees: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 43(3). As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).

21 'Family member' means a person on whom a notice was served under the Immigration and Asylum Act 1999 s 74(4) (see para 185 ante) at the same time in relation to the previous proceedings that such a notice was served on the appellant: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 44(4).

22 Ibid r 44(1). Before the appellate authority determines an appeal summarily, it must give the parties an opportunity of making representations to the effect that the appeal ought not to be determined in that way: r 44(2). In a suitable case the adjudicator may proceed to a full hearing despite the previous hearing: *R v Immigration Appeal Tribunal, ex p Taj* [1981] Imm AR 81. Where an appeal is determined summarily, the appellate authority must send to the parties written notice of that fact, and that notice must contain a statement of the issues raised in the appeal, and specify the previous proceedings in which those issues were determined: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 44(3).

23 Ibid r 15(1) (r 15 substituted by SI 2001/4014). 'Determination' means the decision of the appellate authority to allow or dismiss an appeal and the reasons for that decision: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, reg 2(1). Delay in the promulgation of the determination may render it unsafe (*Sad Chaouche v Secretary of State for the Home Department* (19 June 1998, unreported), IAT; *R v Immigration Appeal Tribunal, ex p Ehalaivan* (14 June 2000, unreported), CA), although not where no prejudice results (*Sambasivam v Secretary of State for the Home Department* [2000] Imm AR 85, CA; *R v Immigration Appeal Tribunal, ex p Shandar* [2000] Imm AR 181). A rule which created an irrebuttable presumption of receipt of a determination was held to be ultra vires: see *R v Secretary of State for the Home Department, ex p Saleem* [2000] 4 All ER 814, [2001] 1 WLR 443, [2000] Imm AR 529, CA.

24 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 15(1) (r 15 as substituted: see note 23 supra). Where a determination is, in whole or in part, in relation to a claim for asylum and: (1) the claim has been certified by the Secretary of State under the Immigration and Asylum Act 1999 s 58, Sch 4 para 9(1) (see para 179 ante); (2) the adjudicator has agreed under Sch 4 para 9(2), that it is a claim to which Sch 4 para 9 applies; and (3) the adjudicator has dismissed the appeal, written notice of the adjudicator's determination must be sent to the Secretary of State who must arrange for it to be sent to, or served personally on, the other parties and the appellant's representative (if he has one): Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 15(2) (as so substituted). Where r 15(2) (as substituted) applies, the Secretary of State must notify the adjudicator whether the written notice was sent to, or personally served on, the appellant and the date on which this was done: r 15(3) (as so substituted).

25 As to the Chief Adjudicator see para 173 ante.

26 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 16(1). Such an application must: (1) be made not later than ten days after written notice of the determination was received by the appellant; (2) be in writing; (3) identify all matters relied on; and (4) be accompanied by copies of all relevant documents: r 16(2) (amended by SI 2001/4014).

27 If sent to the parties in accordance with the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 15(1) (as substituted) or sent to the Secretary of State in accordance with r 15(2) (as substituted): see note 24 supra.

28 Ibid r 16(3) (amended by SI 2001/4014).

29 Where the Chief Adjudicator confirms the determination, written notice must be sent: (1) in the case of a determination to which the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 15(1) (as substituted) applies (see note 24 *supra*), to the parties and the appellant's representative (if he has one); or (2) in the case of a determination to which r 15(2) (as substituted) applies, to the Secretary of State who must arrange for it to be sent to, or served personally on, the other parties and the appellant's representative (if he has one): r 16(5) (substituted by SI 2001/4014).

30 Where the Chief Adjudicator sets aside the determination, written notice must, notwithstanding the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 15 (as substituted) (see note 23 *supra*) be sent to the parties, together with the date, time and place, and any directions, for the rehearing of the appeal: r 16(6) (amended by SI 2001/4014). Any notice given under the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 16(5) (as substituted) or r 16(6) (as amended) must contain, in summary form, the reasons for the decision: r 16(7).

31 Ibid r 16(4).

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/192. Procedure on appeal to Immigration Appeal Tribunal from an adjudicator.

192. Procedure on appeal to Immigration Appeal Tribunal from an adjudicator.

An appeal from the determination of an adjudicator may be made only with the leave of the Immigration Appeal Tribunal¹. An application for leave to appeal must be made not later than ten days, or in the case of an application made from outside the United Kingdom², 28 days, after the appellant has received written notice of the determination against which he wishes to appeal³. An application for leave to appeal must be made by serving on the Tribunal⁴ the appropriate prescribed form⁵, which must: (1) be signed by the appellant or his representative (if he has one)⁶; (2) be accompanied by the adjudicator's determination; (3) identify the alleged errors of fact or law in the adjudicator's determination which would have made a material difference to the outcome, together with all the grounds relied on for the appeal; and (4) state whether a hearing of the appeal is desired⁷. When an application for leave to appeal has been made, the Tribunal must notify the other parties⁸. Leave to appeal must be granted where the appeal is against a decision: (a) that leave to enter was required and the appellate authority is satisfied that at the time of the decision the appellant held a certificate of entitlement; or (b) refusing leave to enter and the appellate authority is satisfied that at the time of the refusal the appellant held an entry clearance, except where the adjudicator was satisfied that at the time of that refusal the appellant was an illegal entrant⁹. Otherwise, leave to appeal must be granted only where the Tribunal is satisfied that the appeal would have a real prospect of success, or there is some other compelling reason why the appeal should be heard¹⁰. When an application for leave to appeal has been decided, except in relation to claims for asylum¹¹, written notice of the Tribunal's decision on the application must be sent to the parties and the appellant's representative (if he has one) and, if granted, the grounds on which the appellant may appeal¹². Where an application for leave to appeal relates, in whole or in part, to a claim for asylum and the appellant is not the Secretary of State, and the Tribunal has refused the application, written notice of the Tribunal's decision on the application must be sent to the Secretary of State who

must arrange for it to be sent to, or served personally on, the other parties and the appellant's representative (if he has one)¹³.

Where evidence which was not submitted to the adjudicator is relied on in an application for leave to appeal, the Tribunal is not required to consider that evidence in deciding whether to grant leave to appeal, unless it is satisfied that there were good reasons why it was not submitted to the adjudicator¹⁴.

Where the Tribunal has refused an application for leave to appeal, the appellant may apply to the Tribunal to review its decision on the ground that it was wrongly made as a result of an administrative or procedural error by the Tribunal¹⁵. The Tribunal may also, of its own motion, if satisfied that the interests of justice so require, not later than ten days after sending notice of its decision to the appellant or the Secretary of State, review its decision on the ground that it was wrongly made as a result of an administrative or procedural error by the Tribunal¹⁶. Where the Tribunal reviews its decision, it may confirm it, or set it aside and reconsider the decision¹⁷. Written notice of the decision must be sent to the parties and must contain, in summary form, the reasons for the decision¹⁸.

The Tribunal may consider as evidence any note or record made by the adjudicator of any proceedings before him in connection with the appeal¹⁹. The Tribunal may, of its own motion or on the application of any party, consider evidence further to that which was submitted to the adjudicator²⁰. The Tribunal must not in its determination rely on any evidence which was not disclosed to all the parties²¹. Where any party wishes to adduce further evidence, he must give written notice to that effect to the Tribunal indicating the nature of the evidence²². Where the Tribunal decides to admit any evidence, it may direct that it be given either orally, in which case the Tribunal may take the evidence itself or remit the appeal to the same or another adjudicator for the taking of that evidence, or in writing, in which case it is given in any manner and at any time that the Tribunal may direct²³.

Unless it considers that it is necessary in the interests of justice, and that it would save time and avoid expense to remit the case to the same or another adjudicator for determination by him in accordance with any directions given to him by the Tribunal, the Tribunal must determine the appeal itself²⁴.

A hearing must be conducted to determine an appeal²⁵.

Written notice of the Tribunal's determination must be sent to every party²⁶.

1 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, rr 17, 18(1).

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 18(2). Time does not start to run if the appellate authority fails to notify the appellant of his right of appeal: *Zolele v Secretary of State for the Home Department* [1999] INLR 422, IAT. As to the vires of a rule creating an irrebuttable presumption of receipt of a determination see *R v Secretary of State for the Home Department, ex p Saleem* [2000] 4 All ER 814, [2001] 1 WLR 443, [2000] Imm AR 529, CA. Either time limit may be extended by the Tribunal where it is satisfied that because of special circumstances, it is just for the time limit to be extended: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 18(3). See also the cases cited in para 191 note 4 ante. Applications for leave to appeal will be considered to have been made in time in accordance with r 18(2) if, but only if, they are made not later than 12 or, in the case of appeals which were made from outside the United Kingdom, 56 days after the date of the notice accompanying the determination of the adjudicator: *Practice Direction* [2001] Imm AR 172. See also *Practice Direction* [2000] Imm AR 551. An application for leave to appeal must be decided by a legally qualified member without a hearing: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 18(8).

4 The application must be sent to the office referred to in the form for receipt of the application, not to any Tribunal office (*R v Secretary of State for the Home Department, ex p Thakar Singh* [2000] INLR 208, IAT), or to the Home Office (*Shaffi v Secretary of State for the Home Department* [1990] Imm AR 468, IAT), or to the Treasury Solicitor (*R v Immigration Appeal Tribunal and an Immigration Appeal Adjudicator (RG Care), ex p Secretary of State for the Home Department* [1990] Imm AR 166, DC).

5 See the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 2(1), Schedule Forms 1A, 2A, 3A. Non-compliance with the requirements of the form does not necessarily invalidate the application: *R v Immigration Appeal Tribunal, ex p Jeyanthan* [1999] 3 All ER 231, [2000] 1 WLR 354, CA.

6 See *R v Immigration Appeal Tribunal, ex p Pollicino* [1989] Imm AR 531 (application lodged, without appellant's knowledge or consent, by his former bail surety: held inadmissible).

7 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 18(4).

8 Ibid r 18(5).

9 Immigration and Asylum Act 1999 s 58, Sch 4 paras 7, 24.

10 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 18(7).

11 Ie unless ibid r 18(9A) (as added) applies: see the text to note 13 infra.

12 Ibid r 18(9) (amended by SI 2001/4014). The Tribunal is not required to consider any grounds for appeal other than those included in the application: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 18(6); *Practice Direction* [2001] Imm AR 172. While the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 18(6) does not prevent consideration of points not raised in a notice of appeal, its language precludes objection being taken to a refusal to consider grounds not in the notice rather than enables objection to be taken to the absence of consideration of such grounds: see *R (on the application of Nuredini) v Immigration Appeal Tribunal* [2002] EWHC 1582 (Admin) (although see *Robinson v Secretary of State for the Home Department, Immigration Appeal Tribunal* [1997] Imm AR 568, CA (duty of Tribunal to ensure compliance with obligations under the Refugee Convention)). See also (under previous rules) *R v Immigration Appeal Tribunal, ex p Wanyoike* [2000] Imm AR 389 (Tribunal had no jurisdiction to reconsider application for leave when further grounds submitted in time). But the grounds of appeal may be varied by the appellant with the leave of the Tribunal: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 21. As to the procedure relating to such a variation see *Practice Direction* [2001] Imm AR 172. The Tribunal is obliged to investigate an allegation of unfairness or procedural irregularity at an adjudicator hearing before refusing leave: *R v Immigration Appeal Tribunal, ex p Susikanth* [1998] INLR 185, CA; *R (on the application of Koncek) v Immigration Appeal Tribunal* (20 November 2000, unreported), QBD.

Where the application for leave to appeal is refused, the notice must include, in summary form, the reasons for the refusal: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 18(10) (amended by SI 2001/4014). The reasons should address specific arguments on legal issues, allegations of procedural irregularity, and fresh evidence: *R v Immigration Appeal Tribunal, ex p Ehalaivan* (14 June 2000, unreported), CA; see also *R v Immigration Appeal Tribunal, ex p Jasvir Pal* (16 June 2000, unreported), QBD; *R v Immigration Appeal Tribunal, ex p Swaleh Mohammed* (18 May 1995, unreported), QBD; *R v Secretary of State for the Home Department, ex p Kabiuku* (24 February 1995, unreported), QBD; *R v Secretary of State for the Home Department, ex p Bamra* (24 February 1995, unreported), QBD; *R v Immigration Appeal Tribunal, ex p Pratheepan* (27 April 1999, unreported), QBD; *R v Immigration Appeal Tribunal, ex p Sendiwalla* (17 February 2000, unreported), QBD. However, standard form reasons suffice where the adjudicator's decision depended on its own facts and an assessment of the evidence which was carried out carefully and reasonably: *Sahota v Immigration Appeal Tribunal* [1995] Imm AR 500, CA; *R v Secretary of State for the Home Department, ex p Thiruchelvam* [1999] Imm AR 217, QBD.

The grant of leave is not reviewable: *R v Secretary of State for the Home Department, ex p Nader* [1998] Imm AR 33.

Where an application for leave to appeal is granted, it is deemed to be the notice of appeal: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 20(1). Where leave to appeal is granted, written notice of the date, time and place fixed for any hearing must be sent to every party, and every party's representative, except where the representative is acting for the Secretary of State, an immigration officer or entry clearance officer, or the United Kingdom Representative of the United Nations High Commissioner for Refugees: r 20(2). As to the Secretary of State see para 2 ante.

13 Ibid r 18(9A) (added by SI 2001/4014). Where the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 18(9A) (as added) applies, the Secretary of State must notify the Tribunal whether the written notice was sent to, or personally served on, the appellant and the date on which this was done: r 18(9B) (added by SI 2001/4014). Where the application for leave to appeal is refused, the notice must include, in summary form, the reasons for the refusal: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 18(10) (amended by SI 2001/4014). See also the cases cited in note 12 supra.

14 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 18(11); *Practice Direction* [2001] Imm AR 172. In asylum appeals, the criteria in *Ladd v Marshall* [1954] 3 All ER 745, CA (significance, credibility and previous unavailability) should not be applied; where evidence is credible and sufficiently cogent

to be capable of affecting the decision, the Tribunal should be slow to refuse to allow it to support an application for leave: *R v Immigration Appeal Tribunal, ex p Aziz* [1999] INLR 355, QBD; *Haile v Immigration Appeal Tribunal* [2001] EWCA Civ 663. See also, in relation to asylum and human rights appeals, the Immigration and Asylum Act 1999 s 77(3); and para 190 ante. However, the appeal to the Tribunal is not intended to provide appellants with a chance to present evidence which they could reasonably have produced to the adjudicator and have failed to produce despite directions: *R v Immigration Appeal Tribunal, ex p Chen Liu Guang* [2000] Imm AR 59, QBD. The Tribunal has no discretion to admit further evidence without notice: *Macharia v Immigration Appeal Tribunal* [2000] Imm AR 190, CA (decided under previous corresponding rules). For further provisions on evidence see *Practice Direction* [2000] Imm AR 407.

15 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 19(1). Such an application must: (1) be made not later than ten days after written notice of the decision refusing leave to appeal was received by the appellant; (2) be in writing; (3) identify all matters relied on; and (4) be accompanied by copies of all relevant documents: r 19(2).

16 Ibid r 19(3) (amended by SI 2001/4014). A review is conducted by a legally qualified member without a hearing: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 19(4).

17 Ibid r 19(5).

18 See ibid r 19(6) (substituted by SI 2001/4014). Written notice of the Tribunal's decision, which must contain, in summary form, the reasons for the decision, must be sent: (1) in the case of a decision to which the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 18(9) (as amended) applies, to the parties and the appellant's representative (if he has one); or (2) in the case of a decision to which r 18(9A) (as added) applies, to the Secretary of State who must arrange for it to be sent to, or served personally on, the other parties and the appellant's representative (if he has one): r 19(6) (as so substituted).

19 Ibid r 22(1).

20 Ibid r 22(2). The Tribunal must not consider any evidence which is not served in accordance with time limits or directions (see r 30; and para 190 post), unless it is satisfied that there are good reasons to do so: r 22(3).

21 Ibid r 22(4) (amended by SI 2001/4014), which is expressed to be subject to the Immigration and Asylum Act 1999 Sch 4 para 6 (hearings in private) (see para 190 ante).

22 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 22(5). The notice must be given as soon as practicable after the parties have been notified that leave to appeal has been granted: r 22(6). See *Shanthakunadivel v Secretary of State for the Home Department* (23 July 1998, unreported), IAT.

23 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 22(7). See also *Practice Direction* [2000] Imm AR 407; *Practice Direction* [2001] Imm AR 172.

24 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 23. See *R (on the application of Secretary of State for the Home Department) v Immigration Appeal Tribunal* [2001] EWHC 261 (Admin); *R (on the application of Sarkisian) v Immigration Appeal Tribunal* [2001] EWHC Admin 486; *Mario v Secretary of State for the Home Department* [1998] INLR 306, IAT. On a hearing de novo after remittal, the adjudicator is obliged to consider all the evidence, law and issues afresh without regard to the previous adjudicator's determination. Although he is entitled to take note of the record of evidence given in the earlier hearing and the determination of the Tribunal, he is not entitled to accept the earlier adjudicator's assessment of the credibility of a witness: *Entry Clearance Officer, Bombay v Patel* [1991] Imm AR 147, IAT. See also *R (on the application of Prado) v Deputy Chief Adjudicator Officer* [2002] EWHC 464 (Admin) (transfer to another adjudicator following remittal).

25 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 24(1). Rule 24(1) does not apply in cases governed by rr 43, 44 (see para 191 ante): r 24(1). A hearing may take place before a single member or a panel on the direction of the Chief Adjudicator: Immigration and Asylum Act 1999 s 57(3), Sch 3 para 6(3), (4). Where there are conflicting decisions, the Tribunal may sit as an all-legal panel, which may be headed by the President, and a decision of such a panel may be starred, to be followed by all Tribunals and adjudicators: see *Practice Direction* [2001] Imm AR 359. A hearing may be conducted or evidence given or representations made by video link or by other electronic means: Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 24(2).

Where an appeal is determined by a panel of more than one member, the determination may be given by a legally qualified member of that panel or, if the panel contains no legally qualified member, by such member as the President of the Tribunal may direct: r 25(2).

26 Ibid r 25(1). Written notice should also be sent to every party's representative, except where the representative is acting for the Secretary of State, an immigration officer or entry clearance officer, or the United Kingdom Representative of the United Nations High Commissioner for Refugees: r 25(1). A delay of 11

months in promulgating the Tribunal's determination does not make the proceedings a nullity: *Berhe v Secretary of State for the Home Department* [2000] Imm AR 463, CA.

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

192 Procedure on appeal to Immigration Appeal Tribunal from an adjudicator

NOTE 1--The appropriate forum for the Secretary of State to argue that he is permitted to withdraw a concession made before an immigration adjudicator is the Immigration Appeal Tribunal rather than the Court of Appeal: *Davoodipana v Secretary of State for the Home Department* [2004] EWCA Civ 106, (2004) Times, 5 February.

NOTE 7--See *R (on the application of Ahmed) v Immigration Appeal Tribunal* [2004] EWCA Civ 399, [2004] All ER (D) 594 (Mar) (appellant's new legal advisers sending grounds of appeal to tribunal on day after former counsel's grounds had been lodged).

NOTES 19-24--The tribunal is not entitled to base its decision on an unexplained assumption: *Vijayanth v Immigration Appeal Tribunal* [2004] All ER (D) 511 (Jul), CA.

NOTE 22--See also *Mazrae v Immigration Appeal Tribunal* (2004) Times, 19 October, CA.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/193. Procedure on appeal from Immigration Appeal Tribunal.

193. Procedure on appeal from Immigration Appeal Tribunal.

An application may be made to the Immigration Appeal Tribunal for leave to appeal, on a question of law, to the Court of Appeal from a final determination of an appeal by the Tribunal¹. An application to the Tribunal for leave to appeal must be made not later than ten days after the party seeking to appeal has received written notice of the determination², and there must be served on the Tribunal and any other party a notice of application for leave to appeal on the appropriate prescribed form³ which must include the grounds of appeal⁴.

An application for leave to appeal must be decided by a legally qualified member of the Tribunal without a hearing⁵.

Where the Tribunal intends to grant leave to appeal, it may, having given every party an opportunity to make representations, instead, set aside the determination appealed against and direct that the appeal to the Tribunal be reheard⁶.

1 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 26.

2 Ibid r 27(1).

3 See ibid r 2(1), Schedule Forms 1A, 2A. The form must be signed by the party seeking leave to appeal or his representative (if he has one): r 27(3).

4 Ibid r 27(2).

5 Ibid rr 2(1), 27(4). Written notice of the Tribunal's decision must be sent to the parties, and such notice must contain, in summary form, the reasons for the decision: r 27(6), (7).

6 Ibid r 27(5).

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

193 Procedure on appeal from Immigration Appeal Tribunal

NOTE 1--As to the duty of solicitors and counsel to ensure rights of appeal are not abused, see *Re Kahye* (2003) Times, 11 March, CA. The appropriate forum for the Secretary of State to argue that he is permitted to withdraw a concession made before an immigration adjudicator is the Immigration Appeal Tribunal rather than the Court of Appeal: *Davoodipanh v Secretary of State for the Home Department* [2004] EWCA Civ 106, (2004) Times, 5 February. The Immigration Appeal Tribunal has the discretion to order a rehearing on an application for permission to appeal if there is a serious risk of injustice, because something had gone wrong at the hearing or an important piece of evidence had been overlooked: *E v Secretary of State for the Home Department; R v Secretary of State for the Home Department* [2004] EWCA Civ 49, [2004] QB 1044. See also *FP (Iran) v Secretary of State for the Home Department; MB (Libya) v Secretary of State for the Home Department* [2007] EWCA Civ 13, [2007] All ER (D) 155 (Jan) (unlawfulness of rules which denied the right to be heard).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(4) APPEALS/194. Procedure on appeal to Special Immigration Appeals Commission.

194. Procedure on appeal to Special Immigration Appeals Commission.

The Lord Chancellor may make rules for regulating the exercise of rights of appeal under the Special Immigration Appeals Commission Act 1997, for prescribing the practice and procedure to be followed on or in connection with such appeals, including the mode and burden of proof and admissibility of evidence on such appeals, and for other matters preliminary or incidental to or arising out of such appeals, including proof of the decisions of the Special Immigration Appeals Commission¹. The Lord Chancellor may also make rules regulating, and prescribing the procedure to be followed on, applications to the Commission for leave to appeal from the Commission to an appeal court².

The following provisions apply to appeals brought under the Special Immigration Appeals Commission Act 1997³ and to appeals transferred to the Commission under the Immigration and Asylum Act 1999⁴ but they do not prejudice steps already taken in respect of a transferred appeal, or require any step to be taken which is equivalent to a step which has already been taken in respect of such an appeal⁵.

On receiving the notice of appeal, the Secretary of State⁶ must, unless he does not intend to oppose the appeal or does not intend to object to the disclosure of material to the appellant, inform the Attorney General⁷ of the proceedings before the Commission, with a view to the Attorney General, if he thinks fit, appointing a special advocate to represent the interests of the appellant in the proceedings⁸. The function of the special advocate is to represent the interests of the appellant by making submissions to the Commission in any proceedings from which the appellant and his representative are excluded, cross-examining witnesses at any such proceedings, and making written submissions to the Commission⁹. Once the Secretary of State has made prescribed material¹⁰ available to him, the special advocate may not communicate directly or indirectly with the appellant or his representative¹¹ on any matter connected with proceedings before the Commission¹² without seeking directions from the Commission authorising him to seek information in connection with the proceedings from the appellant or his representative¹³.

The appellant must give notice of an appeal¹⁴ no later than five days after receiving the notice of the decision being appealed against, where he appeals in the United Kingdom¹⁵, or 28 days after receiving notice of the decision being appealed against, where he appeals from outside the United Kingdom¹⁶.

An appeal to the Commission is made by sending to the Secretary of State a notice of appeal by hand, by fax or by post to the address or fax number specified in the document which informed the appellant of the decision against which he is appealing¹⁷. As soon as practicable after he receives a notice of appeal, in a case where no additional grounds have been stated, the Secretary of State must send that notice, together with any documents attached to it, to the Commission¹⁸.

If the Secretary of State intends to oppose the appeal, he must: (1) provide the Commission with a summary of the facts relating to the decision being appealed and the reasons for the decision; (2) inform the Commission of the grounds on which he opposes the appeal; and (3) provide the Commission with a statement of the evidence which he relies upon in support of those grounds¹⁹. Where the Secretary of State objects to material referred to in heads (1) to (3) above being disclosed to the appellant or his representative, he must also: (a) state the reasons for his objection; and (b) if and to the extent it is possible to do so without disclosing information contrary to the public interest, provide a statement of that material in a form which can be shown to the appellant²⁰.

In the absence of the appellant and his representative, the Commission must decide whether to uphold the Secretary of State's objection²¹. Where the Commission overrules the Secretary of State's objection or requires him to provide material in a different form from that which he has provided, and the Secretary of State wishes to continue to oppose the appeal, he may not be required to disclose any material which was the subject of his unsuccessful objection if he chooses not to rely upon it in opposing the appeal²².

The appellant may amend his notice of appeal or deliver supplementary grounds of appeal and must send any proposed amended notice of appeal or supplementary grounds of appeal to the Secretary of State who must, as soon as practicable, send a copy to the Commission²³. With the leave of the Commission, the Secretary of State may amend or supplement the material which he has provided²⁴. Subject to any decision which it makes in this respect and to the need to secure that information is not disclosed contrary to the public interest, the Commission may give directions for the conduct of proceedings²⁵.

Before the Commission notifies the appellant of any order or direction made or given in the absence of the Secretary of State, any summary²⁶ of the submissions and evidence received in the appellant's absence, and its determination²⁷, it must first notify the Secretary of State²⁸. If the Secretary of State considers that compliance by him with an order or direction or notification to the appellant of any such matter would cause information to be disclosed contrary to the public interest, he may apply to the Commission to reconsider the order or

direction or to review the proposed summary or determination²⁹. The Secretary to the Commission must send notice of the date, time and place fixed for any hearing to the special advocate and every party entitled to attend that hearing³⁰. Where the Commission considers it necessary for the appellant and his representative to be excluded from the proceedings or any part of them in order to secure that information is not disclosed contrary to the public interest, it must direct accordingly, and hear the proceedings, or that part of it from which the appellant and his representative are excluded, in private³¹.

In any proceedings on an appeal, the evidence of witnesses may be given either orally, before the Commission, or in writing³². Every party is entitled to adduce evidence and to cross-examine witnesses during any part of the hearing of the appeal from which he and his representative are not excluded³³. Where the appellant or his representative has been excluded from the hearing of the appeal or any part of it, the Commission must, before it determines the appeal, give the appellant a summary of the submissions and evidence received in his absence if and to the extent it is possible to do so without disclosing information contrary to the public interest³⁴.

The Commission must record its determination and, to the extent possible without disclosing information contrary to the public interest, the reasons for it, and must publish the determination and send written notice to the special advocate and the parties³⁵.

Certain powers of the Commission³⁶ may be exercised by the chairman or by certain other members of the Commission³⁷ but instead of exercising this power, the chairman or member may remit the matter to be dealt with by the Commission³⁸.

An appeal lies on a question of law, with leave, from the Commission to the Court of Appeal³⁹. An application to the Commission for leave to appeal must be made no later than ten days after the party seeking leave to appeal has received written notice of the determination⁴⁰. The Commission may decide the application without a hearing, unless it considers that special circumstances make a hearing necessary or desirable⁴¹.

Appeal procedures apply with modifications to bail proceedings⁴² and proceedings relating to suspected international terrorists⁴³.

1 Special Immigration Appeals Commission Act 1997 s 5(1) (amended by the Race Relations (Amendment) Act 2000 s 9(1), Sch 2 para 28(a)). Rules under the Special Immigration Appeals Commission Act 1997 s 5 (as amended) must provide that an appellant has the right to be legally represented in any proceedings before the Commission on an appeal under s 2 (as amended) (see para 177 ante) or s 2A (as added and amended) (see para 184 ante), subject to any power conferred on the Commission by such rules: s 5(2). Rules under s 5 (as amended) may, in particular: (1) make provision enabling proceedings before the Commission to take place without the appellant being given full particulars of the reasons for the decision which is the subject of the appeal; (2) make provision enabling the Commission to hold proceedings in the absence of any person, including the appellant and any legal representative appointed by him; (3) make provision about the functions in proceedings before the Commission of persons appointed under s 6 (see note 7 infra); and (4) make provision enabling the Commission to give the appellant a summary of any evidence taken in his absence: s 5(3). Rules under s 5 (as amended) may also include provision: (a) enabling any functions of the Commission which relate to matters preliminary or incidental to an appeal, or which are conferred by the Immigration Act 1971 s 4, Sch 2 Pt II (as amended), to be performed by a single member of the Commission; or (b) conferring on the Commission such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of its functions: Special Immigration Appeals Commission Act 1997 s 5(4). The power to make rules under s 5 (as amended) includes power to make rules with respect to applications to the Commission under the Immigration Act 1971 Sch 2 paras 22-24 (as amended) and matters arising out of such applications: Special Immigration Appeals Commission Act 1997 s 5(5). In making such rules, the Lord Chancellor must have regard, in particular, to the need to secure that decisions which are the subject of appeals are properly reviewed, and the need to secure that information is not disclosed contrary to the public interest: s 5(6). The power to make rules under s 5 (as amended) is exercisable by statutory instrument: s 5(8). No such rules may be made unless a draft of them has been laid before and approved by resolution of each House of Parliament: s 5(9). The Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881 (as amended) have been made partly under the Special Immigration Appeals Commission Act 1997 s 5 (as amended).

2 Ibid s 8(1). Leave to appeal is granted under s 7 (as amended): see para 189 ante. Rules under s 8 may include provision enabling an application for leave to appeal to be heard by a single member of the

Commission: s 8(2). The power to make rules under this provision is exercisable by statutory instrument: s 8(3). No such rules may be made unless a draft of them has been laid before and approved by resolution of each House of Parliament: s 8(4). The Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881 (as amended) have been made partly under the Special Immigration Appeals Commission Act 1997 s 8.

3 The appeals brought under the Special Immigration Appeals Commission Act 1997 s 2 (as amended) (see para 184 ante): Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 6(1) (r 6 substituted by SI 2000/1849).

4 The appeals transferred under the Immigration and Asylum Act 1999 s 78(3) or s 78(5) where an appeal has been or may be made under the Special Immigration Appeals Commission Act 1997 s 2(1) (as substituted) (see para 184 ante): Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 6(1) (as substituted: see note 3 supra).

5 Ibid r 6(2) (as substituted: see note 3 supra).

6 As to the Secretary of State see para 2 ante.

7 The relevant law officer. The relevant law officer is: (1) in relation to proceedings before the Commission in England and Wales, the Attorney General; (2) in relation to proceedings before the Commission in Scotland, the Lord Advocate; and (3) in relation to proceedings before the Commission in Northern Ireland, the Attorney General for Northern Ireland: Special Immigration Appeals Commission Act 1997 s 6(2). The relevant law officer may appoint a person to represent the interests of an appellant in any proceedings before the Commission from which the appellant and any legal representative of his are excluded: s 6(1). A person appointed under s 6(1), if appointed for the purposes of proceedings in England and Wales, must have a general qualification for the purposes of the Courts and Legal Services Act 1990 s 71 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 742), and if appointed for the purposes of proceedings in Northern Ireland, must be a member of the Bar of Northern Ireland: Special Immigration Appeals Commission Act 1997 s 6(3). A person appointed under s 6(1) is not responsible to the person whose interests he is appointed to represent: s 6(4).

8 Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 7(1), (2) (r 7(1) amended by SI 2000/1849). If at any stage in the proceedings the Secretary of State intends to object to the disclosure of material to the appellant, he must immediately notify the Attorney General as in the Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 7(1) (as amended): r 7(3).

9 Ibid r 7(4).

10 The under ibid r 10(3): see note 20 infra.

11 The except in accordance with ibid r 7(6)-(9).

12 Ibid r 7(5). He may do so at any time before the prescribed material is made available: r 7(6).

13 Ibid r 7(7). The Commission must notify the Secretary of State of a request for directions and the Secretary of State must, within a period specified by the Commission, give it notice of any objection which he has to the request for information being made or to the form in which it is proposed to be made: r 7(8). Where the Secretary of State makes such an objection, r 11 applies (see the text and notes 21-22 infra): r 7(9).

14 The notice of appeal is taken to have been served as required on the day on which it is received at the address or fax number specified in the notice of the decision against which the appeal is made: ibid r 8(5) (r 8 substituted by SI 2000/1849).

15 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

16 Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 8(1) (r 8 as substituted: see note 14 supra). The period begins from the end of the day on which the notice of the decision being appealed against was received: r 8(2) (as so substituted). Where the period expires on an excluded day, the notice of appeal is taken to have been served as required if served on the next day that is not an excluded day: r 8(3) (as so substituted). Where the five-day period includes an excluded day, that day must be discounted: r 8(4) (as so substituted). 'Excluded day' means a Saturday, a Sunday, a bank holiday, Christmas Day, 27-31 December or Good Friday: r 8(6) (as so substituted). 'Bank Holiday' means a day that is specified in, or appointed under the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321): Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 8(7) (as so substituted).

17 Ibid r 9(1) (r 9 substituted by SI 2000/1849). The notice of appeal must: (1) set out the grounds for the appeal; (2) state the name and address of the appellant and the name and address of any representative of his; and (3) be signed by the appellant or his representative: Special Immigration Appeals Commission (Procedure)

Rules 1998, SI 1998/1881, r 9(2)-(4) (as so substituted). The appellant must attach to the notice of appeal a copy of the document which informed him of the decision against which he is appealing and, where a notice has been served on the appellant under the Immigration and Asylum Act 1999 s 74(4) (see para 185 ante), a statement form on which additional grounds which he has or may have for wishing to enter or remain in the United Kingdom may be stated, whether or not that form has been completed: Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 9(5) (as so substituted). Any document required or authorised to be given or sent to the Secretary of State must be directed to an address or fax number specified by him: r 5(1)(b) (amended by SI 2000/1849).

18 Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 9(6) (as substituted: see note 17 supra). Where the appellant is treated as appealing on additional grounds by virtue of the Immigration and Asylum Act 1999 s 77(2) (see para 185 ante), he must serve any variation of his grounds of appeal on the Secretary of State no later than five days after he received the supplementary grounds of refusal: Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 9A(1) (r 9A added by SI 2000/1849). As soon as practicable after this period, the Secretary of State must send to the Commission: (1) the notice of appeal, together with any documents attached to it under the Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 9(5) (as substituted) (see note 17 supra); (2) any supplementary grounds for refusal; and (3) any variation of the grounds of appeal: r 9A(2) (as so added). 'Supplementary grounds of refusal' means the reasons given by the Secretary of State for maintaining the decision being appealed against after consideration by him of the additional grounds: r 9A(4) (as so added). For the purpose of calculating the period specified in r 9A(1) (as added), r 8(2)-(7) (as substituted) (see note 16 supra) applies as if the variation of grounds of appeal were a notice of appeal and the supplementary grounds of refusal were the notice of the decision against which the appeal is made: r 9A(3) (as so added). Any document required or authorised to be given or sent to the Commission must be directed to the Secretary to the Commission: r 5(1)(a).

19 Ibid r 10(1) (amended by SI 2000/1849).

20 Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 10(2). Where he makes such an objection, the Secretary of State must make available to the special advocate, as soon as it is practicable to do so, the material which he has provided to the Commission under r 10(1), (2) (r 10(1) as amended): r 10(3).

21 Ibid r 11(1), (2). Before doing so, the Commission must invite the special advocate to make written representations: r 11(3). After considering such representations, the Commission may invite the special advocate to make oral representations, or uphold the Secretary of State's objection without requiring further representations from the special advocate: r 11(4). Where the Commission is minded to overrule the Secretary of State's objection, or to require him to provide material in a different form from that in which he has provided it (ie under ibid r 10(2)(b): see head (b) in the text), the Commission must invite the Secretary of State and the special advocate to make oral representations: r 11(5).

22 Ibid r 11(6).

23 Ibid r 12(1), (2) (r 12(1), (2) substituted by SI 2000/1849). Where the Secretary of State has provided material under Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 10 (as amended) (see the text and notes 19-20 supra), the appellant must obtain the leave of the Commission before amending his notice of appeal or delivering supplementary grounds of appeal under r 12(1): r 12(1A) (added by SI 2000/1849).

24 Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 12(3). Where the Secretary of State provides further objections under r 12(3), the Commission must consider them in accordance with r 11 (see the text and notes 21-22 supra): r 12(4).

25 Ibid r 13(1). Directions may: (1) provide for a particular matter to be dealt with as a preliminary issue and for a pre-hearing review to be held; (2) limit the length of oral submissions and the time allowed for the examination and cross-examination of witnesses; (3) require any party to the appeal to give to the Commission statements of facts and statements of the evidence which will be called at any hearing, including such statements provided in a modified or edited form, a skeleton argument which summarises the submissions which will be made and cites all the authorities which will be relied upon, identifying any particular passages to be relied upon, an estimate of the time which will be needed for any hearing, a list of the witnesses who will be called to give evidence, a chronology of events, a statement of any interpretation requirements, and to serve any such material on the other parties to the appeal: r 13(2). The Commission may, subject to any specific provisions of the Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881 (as amended) specify time limits for steps to be taken in the proceedings and extend any time limit: r 13(3) (substituted by SI 2000/1849). The power to give directions may be exercised in the absence of the parties: Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 13(4). Where a party fails to comply with a direction, the Commission may send him a notice which states the respect in which he has failed to comply with the relevant direction, the time limit for complying with it, and that the Commission may proceed to determine

the appeal on the material available to it if the party fails to comply with the relevant direction within the time specified: r 14(1). Where the party in default fails to comply with the notice, the Commission may proceed to determine the appeal on the material available to it: r 14(2).

26 le prepared under ibid r 22 (as amended): see the text and note 34 infra.

27 le under ibid r 23: see the text and note 35 infra.

28 Ibid r 15(1), (2).

29 Ibid r 15(3). Rule 11 (see the text and notes 21-22 supra) applies to the Commission's consideration of the Secretary of State's application: r 15(6). At the same time as he makes his application, or as soon as practicable afterwards, the Secretary of State must send a copy of it to the special advocate: r 15(4). An application by the Secretary of State must be made within 14 days of receipt of notification, and the Commission must not notify the appellant before the time for applying has expired: r 15(5).

30 Ibid r 16. The parties to an appeal are the appellant and the Secretary of State but, if the United Kingdom Representative of the United Nations High Commissioner for Refugees ('the United Kingdom Representative') gives written notice that he wishes to be treated as a party to the appeal, he must be so treated from the date of the notice and any restriction imposed in relation to the appellant as to the disclosure of material, attendance at hearings, notification of directions or decisions and communications with the special advocate, applies to the United Kingdom Representative: r 17.

The appellant may act in person or be represented or appear by a person having a specified qualification (ie a qualification referred to in the Special Immigration Appeals Commission Act 1997 s 6(3): see note 7 supra), a person appointed by any voluntary organisation for the time being in receipt of a specified grant (ie under the Immigration and Asylum Act 1999 s 81 (see para 173 ante)); or with the leave of the Commission, any other person: Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 18(1); Interpretation Act 1978 s 17(2). The Secretary of State and the United Kingdom Representative may be represented by any person appointed by them respectively for that purpose: Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 18(2).

31 Ibid r 19(1). The Commission may hear the proceedings or part of them in private for any other good reason: r 19(2).

32 Ibid r 20(1). If in writing it must be given in such a manner and at such time as the Commission has directed: r 20(1). The Commission may also receive evidence in documentary or any other form, and may receive evidence that would not be admissible in a court of law: r 20(2), (3). No person may be compelled to give evidence or produce a document which he could not be compelled to give or produce on the trial of an action in the part of the United Kingdom in which the proceedings before the Commission are taking place: r 20(4).

33 Ibid r 20(5). Subject to rr 3, 20(4), 21(2), the Commission may require any person in the United Kingdom to attend as a witness at any proceedings before the Commission and to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the appeal: r 21(1). No person may be required to travel more than 16 kilometres from his place of residence unless the necessary expenses of his attendance are paid or tendered to him: r 21(2). Where a party requests the attendance of a witness, that party must pay or tender those expenses: r 21(3). The Commission may require a witness to give evidence on oath: r 20(6).

34 Ibid r 22(1) (amended by SI 2000/1849). Where it provides such a summary, the Commission must afford the special advocate and the parties an opportunity to make representations and adduce evidence or further evidence to it in respect of the material contained in the summary: Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 22(2).

35 Ibid r 23(1), (2). The Commission should not issue two determinations, one 'open' and one 'closed', but should issue one determination which enables the appellant to make sense of the decision without the disclosure of dangerous details: *Secretary of State for the Home Department v Rehman* [2000] INLR 531, CA.

36 le those under the Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 12(1) (as substituted), r 12(3), 13 (as amended), rr 25-27 (r 26 as amended): r 4(1).

37 le a member who falls within the Special Immigration Appeals Commission Act 1997 s 1, Sch 1 para 5 (as amended) (see para 173 ante): Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 4(1).

38 Ibid r 4(2). Where the chairman or member exercises any power of the Commission, references to the Commission in the Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881 (as amended), as appropriate include references to him: r 4(3).

39 See the Special Immigration Appeals Commission Act 1997 s 7 (as amended); and para 189 ante. See also the Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 24.

40 Ibid r 25(1).

41 Ibid r 25(2).

42 See ibid r 26 (as amended), r 27; and para 193 ante.

43 See the Anti-terrorism, Crime and Security Act 2001 s 27 (appeals and review of certification of a person as a suspected international terrorist), s 30 (proceedings relating to a derogation from the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5). See also *A v Secretary of State for the Home Department* (30 July 2002, unreported) (SC/1-7/2002), SIAC. As to the modified procedures in relation to asylum appeals to which the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906) art 1F or art 33(2) applies see the Anti-terrorism, Crime and Security Act 2001 s 33.

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

194 Procedure on appeal to Special Immigration Appeals Commission

TEXT AND NOTES--SI 1998/1881 (as amended) replaced: Special Immigration Appeals Commission (Procedure) Rules 2003, SI 2003/1034 (amended by SI 2007/1285, SI 2007/3370).

TEXT AND NOTES 1, 2--The Lord Chancellor's functions under the 1997 Act ss 5, 8 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 1--1997 Act s 5(1), (2) amended: Nationality, Immigration and Asylum Act 2002 Sch 7 para 23(a). Rules under the 1997 Act s 5 may, in particular, do anything which may be done by rules under the 2002 Act s 106 (appeals: rules): 1997 Act s 5(2A) (added by 2002 Act Sch 7 para 23(b)).

NOTES 6-13--See *R (on the application of AHK) v Secretary of State for the Home Department* [2009] EWCA Civ 287, [2009] 1 WLR 2049, [2009] All ER (D) 35 (Apr).

NOTE 43--2001 Act ss 27, 30 repealed: Prevention of Terrorism Act 2005 s 16(2)(a). 2001 Act s 33 repealed: Immigration, Asylum and Nationality Act 2006 s 55(6), Sch 3. See further s 55(1)-(5); and PARA 239.

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/3. Immigration/(4) Appeals/195. Judicial review in the immigration context.

195. Judicial review in the immigration context.

Decisions of persons or bodies such as the Secretary of State¹, immigration officers², entry clearance officers³, adjudicators⁴, the Immigration Appeal Tribunal⁵, local authorities providing interim support and asylum support adjudicators⁶ are subject to judicial review⁷ in the Administrative Court on the normal judicial review grounds of illegality, irrationality or procedural impropriety⁸. Prerogative acts such as the refusal of a passport are reviewable⁹, as are delays by administrative bodies and failures to act in accordance with a representation or policy or to give effect to a legitimate expectation¹⁰.

If the decision is to refuse asylum or to act in a way which the claimant alleges is a breach of fundamental human rights, the court must subject the decision to rigorous examination by reference to the factual material on which it was based¹¹, and where appropriate must decide whether the decision was necessary in a democratic society and was proportionate to one of the legitimate aims set out in the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)¹², which involves the court assessing whether the decision maker has given appropriate weight to the relevant factors, within the discretionary area of judgment¹³. In meeting a judicial review challenge to a decision to remove a person for illegal entry or residence¹⁴, the Secretary of State needs to satisfy the court that the claimant is in fact an illegal entrant or has remained unlawfully, since being unlawfully resident is a condition precedent to the Secretary of State's having the power to remove a person as such¹⁵.

The Administrative Court will not hear an application for judicial review of an immigration decision where there is a statutory right of appeal, unless there are exceptional circumstances¹⁶. Such exceptional circumstances do not exist merely because a person refused leave to enter the United Kingdom would prefer not to leave the country before exercising the statutory right of appeal from abroad (where there is no right of appeal from within the country)¹⁷.

An application for judicial review must be made promptly¹⁸, and in any event within three months of the decision complained of, and the time limit cannot be artificially extended by making further representations containing no new material in order to generate a fresh formal decision¹⁹. Judicial review of a refusal of leave to appeal to the Tribunal may succeed on grounds which were not before the Tribunal, where the point was obvious in the sense that it had a strong prospect of success²⁰.

Where the decision-maker has agreed to reconsider the decision under review, it is inappropriate in all but the rarest of cases involving points of general importance and wide application to proceed to a substantive hearing, but where a challenge might lie against any future adverse decision, the right course is to put the judicial review on hold, with no further evidence and no steps to bring it to substantive hearing, and a fresh decision should be reached as soon as possible²¹.

Where the Secretary of State must establish the existence of precedent facts to justify the decision, the court will hear oral evidence and cross-examination if necessary, but hearsay evidence is admissible²². In cases involving an allegation that removal would breach fundamental human rights, the court will not shut out evidence, including evidence not before the Secretary of State at the time of his decision²³. Discovery should be unnecessary in judicial review, since it is the obligation of the defendant public body to make frank disclosure to the court of the decision-making process, but the absence of a statutory duty to give reasons cannot be prayed in aid to avoid disclosure²⁴. Immigration cases should (so far as possible) be given priority in listing in the High Court and the Court of Appeal to avoid lengthy delays²⁵.

Home Office practice in relation to removal of persons from the United Kingdom is that, where permission to move for judicial review is granted, the Home Office will not remove the claimant until the case is disposed of in the Administrative Court or (if he is promptly notified of the claimant's intention to appeal) the Court of Appeal; if removal takes place notwithstanding the grant of permission (either because the application is made extremely late or because of a mistake) the Secretary of State will do his best to return the applicant to the United Kingdom;

and where a decision to remove is made, adequate notice will be given to allow an application for judicial review to be lodged²⁶. Where a person obtains permission to move for judicial review, and the Secretary of State declines to undertake not to remove that person from the jurisdiction pending the determination of the judicial review application, the Administrative Court has power to order a stay of the removal²⁷ or to achieve the same result by the issue of a writ of habeas corpus²⁸.

1 As to the Secretary of State see para 2 ante.

2 As to immigration officers and their powers see para 140 et seq ante.

3 As to entry clearance officers see para 96 ante.

4 As to adjudicators see para 173 ante.

5 As to the Immigration Appeal Tribunal see para 173 ante.

6 As to interim support for asylum-seekers from local authorities under the Immigration and Asylum Act 1999 s 95(13), Sch 9, refusal of which gives rise to no appeal rights and so attracts judicial review, see para 247 post. As to asylum support adjudicators (who hear appeals against a refusal of support by the National Asylum Support Service (NASS)) under the Immigration and Asylum Act 1999 Pt VI (ss 94-127) (as amended), Sch 10, see para 253 note 3 post. As to the National Asylum Support Service see para 245 post.

7 As to the procedure and substance of judicial review see generally JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq.

8 *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, [1984] 3 All ER 935, HL, per Lord Diplock. See also *Associated Provincial Picture Houses Ltd v Wednesbury Corp*n [1948] 1 KB 223, [1947] 2 All ER 680, CA; and JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq. Illegality covers the vices of subordinate legislation, the Immigration Rules and procedure rules: see *R (on the applications of Javed and Ali) v Secretary of State for the Home Department* [2001] EWCA Civ 789, [2002] QB 129, [2001] Imm AR 529, CA; *R v Immigration Appeal Tribunal, ex p Manshoora Begum* [1986] Imm AR 385; *R v Secretary of State for the Home Department, ex p Saleem* [2000] 4 All ER 814, [2001] 1 WLR 443, [2000] Imm AR 529, CA. As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395). Procedural impropriety covers the duty to act fairly (see *Gaima v Secretary of State for the Home Department* [1989] Imm AR 205, CA; *R v Secretary of State for the Home Department, ex p Fayed* [1997] 1 All ER 228, [1998] 1 WLR 763, CA (failure to give a chance to comment before an adverse conclusion is drawn)); breach of a legitimate expectation (*R v Secretary of State for the Home Department, ex p Khan* [1985] 1 All ER 40, [1984] 1 WLR 1337, CA (application of rule after more liberal policy had been cited); *R v Secretary of State for the Home Department, ex p Amankwah* [1994] Imm AR 240 (unexplained departure from published policy); see also *Miah v Secretary of State for the Home Department* [1992] Imm AR 106, CA; *Hussain and Begum v Immigration Appeal Tribunal and Secretary of State for the Home Department* [1991] Imm AR 413, CA). In *Bugdaycay v Secretary of State for the Home Department* [1987] AC 514 at 522-523, [1987] 1 All ER 940 at 945, [1987] Imm AR 250 at 254-255, the House of Lords applied the test of *Wednesbury* irrationality to the decision to refuse asylum, but since then the courts have said that a more intense standard of review is required where decisions impact on fundamental human rights such as the right to asylum: see notes 11-12 infra.

9 See *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Everett* [1989] QB 811, [1989] 1 All ER 655, [1989] 2 WLR 224, CA (refusal to issue passport). For prerogative powers see also *R v Secretary of State for the Home Department, ex p Ahmed and Patel* [1998] INLR 570, CA.

10 *R v Secretary of State for the Home Department, ex p Phansopkar* [1976] QB 606, [1975] 3 All ER 497, CA (long backlog in deciding applications for entry from Indian sub-continent for wives of British citizens who had the right of abode); *R v Secretary of State for the Home Department, ex p Deniz Mersin* [2000] INLR 511, CA (delay in implementing adjudicator's decision to recognise claimant as refugee); *Gowa v A-G* [1985] 1 WLR 1003, HL (estoppel); *R v Secretary of State for the Home Department, ex p Khan* [1985] 1 All ER 40 (legitimate expectation); *A-G of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629, PC.

11 Although the court's role is generally not a fact-finding one, evidence will be carefully scrutinised in human rights cases and evidence not before the decision-maker will be admitted: see *R v Secretary of State for the Home Department, ex p Turgut* [2001] 1 All ER 719, CA, a case on the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 3, for the appropriate standard of review in a case engaging absolute rights (freedom from torture). See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 122 et seq.

12 The test set out in the second part of many of the relevant articles of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), such as art 8: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 149 et seq. In *Smith v United Kingdom* (1999) 29 EHRR 493 at para 138, the European Court of Human Rights found a breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 13, as judicial review was not rigorous enough to provide an effective remedy for the applicants since 'the threshold ... was placed so high that it effectively excluded any consideration by the domestic courts of the question of whether the interference with the applicants' rights answered a pressing social need or was proportionate to the national security and public order aims pursued, principles which lie at the heart of the Court's analysis of complaints under Article 8 of the Convention'. For the appropriate standard of review in such cases see *R (on the application of Mahmood) v Secretary of State for the Home Department* [2001] 1 WLR 840, [2001] Imm AR 229, CA, modified by *R (on the application of Daly) v Secretary of State for the Home Department* [2001] UKHL 26, [2001] 2 AC 532, [2001] 3 All ER 433, and *R (on the application of Samaroo) v Secretary of State for the Home Department* [2001] EWCA Civ 1139; cf for statutory appeals *B v Secretary of State for the Home Department* [2000] Imm AR 478, CA.

13 See *R (on the application of Samaroo) v Secretary of State for the Home Department* [2001] EWCA Civ 1139.

14 See paras 151 (illegal entry), 160 ante (overstaying, breach of conditions and remaining by deception).

15 *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL. This does not mean that permission for judicial review must always be granted in respect of an illegal entry decision: *Uche v Secretary of State for the Home Department* [1991] Imm AR 252, CA. However, a leave stamp on the passport is prima facie strong evidence of lawful entry, and where fraud or false representations are alleged, the standard of proof, albeit a civil standard, is high: *Khawaja v Secretary of State for the Home Department* supra. The Immigration and Asylum Act 1999 s 10 puts overstayers, persons in breach of conditions and persons whose leave to remain was obtained by deception in the same position with regard to removal as illegal entrants: see para 160 ante. It should be noted that since the amendments to the Immigration Act 1971 s 4, Sch 2 para 16 brought about by the Immigration and Asylum Act 1999 s 140(1), detention of persons reasonably suspected of illegal entry or unlawful residence in the United Kingdom is lawful, so the 'precedent fact' jurisdiction of the Administrative Court operates only in relation to decisions to remove, not to detain.

16 *R v Secretary of State for the Home Department, ex p Swati* [1986] 1 All ER 717, [1986] 1 WLR 477, CA, applied in *Abbassi v Secretary of State for the Home Department* [1992] Imm AR 349, CA, and *Morikawa v Secretary of State for the Home Department* [1995] Imm AR 258, CA (application for judicial review refused where right of appeal existed against refusal of leave to enter as prospective student); *Chirenje v Immigration Officer, Heathrow* [1996] Imm AR 321, CA (application for judicial review refused where right of appeal existed against refusal of leave to enter as working holidaymaker). See also *R v Chief Immigration Officer, Gatwick Airport, ex p Kharrazi* [1980] 3 All ER 373, [1980] 1 WLR 1396, CA. See also *R (on the application of the Kurdistan Workers' Party) v Secretary of State for the Home Department* [2002] EWHC 644 (Admin) (proscription of 'terrorist' organisations reviewable by the Proscribed Organisations Appeals Commission, and so not susceptible to judicial review). But allegations of procedural impropriety or unfairness in a Tribunal hearing should be the subject of judicial review, not a statutory appeal: *Macharia v Immigration Appeal Tribunal* [2000] INLR 156, CA. Judicial review is available to challenge a decision of the Tribunal which is not a 'final determination', such as a decision to remit an appeal to an adjudicator, or a ruling on a preliminary issue: *Kara v Secretary of State for the Home Department* [1995] Imm AR 584; *R (on the application of the Secretary of State for the Home Department) v Immigration Appeal Tribunal* [2001] EWHC Admin 261, [2001] 4 All ER 430; *Secretary of State for the Home Department v Zahir* [1995] Imm AR 570, CA. Other decisions which give rise to no statutory appeal and are therefore challengeable by way of judicial review include a Tribunal's refusal of leave to appeal from an adjudicator; an adjudicator's decision on interlocutory issues which give no right of appeal to the Tribunal; adjudicator determinations upholding the Secretary of State's certification of asylum or human rights or discrimination claims under the Immigration and Asylum Act 1999 Sch 4 paras 9 (as amended), 9A (as added) (see para 179 ante).

Judicial review may be refused if the claimant has failed to take advantage of an appeal opportunity (*R v Secretary of State for the Home Department, ex p Luciani* [1996] Imm AR 558; *Sakala v Secretary of State for the Home Department* [1994] Imm AR 227, CA); but not where the opportunity was lost through unintentional error (*R v Immigration Appeal Tribunal, ex p Secretary of State for the Home Department* [1990] Imm AR 166).

17 See *R v Secretary of State for the Home Department, ex p Swati* [1986] 1 All ER 717, [1986] 1 WLR 477, CA; *R v Secretary of State for the Home Department, ex p Doorga* [1990] Imm AR 98, CA; *R v Secretary of State for the Home Department, ex p Hettierarachchi* [1991] Imm AR 378 (part refusal case on basis that indefinite leave to remain stamp was a forgery: held *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL, not applicable). As to the absence of a right of appeal from within the United Kingdom in most cases of a refusal of leave to enter see para 186 ante. For an example of exceptional circumstances where the principle in *R v Secretary of State for the Home Department, ex p Swati* supra was not applied see *R v Secretary of State for the Home Department, ex p Uzoenyi* [1992] COD 217, QBD (two years had elapsed since the refusal of leave to enter; but the court indicated that the *Swati* principle might well have

been applied at the leave stage). The *Swati* principle has not been applied to those attempting to re-enter the United Kingdom as returning residents.

18 *R v Secretary of State for the Home Department, ex p Ondiek* (25 February 2000, unreported), QBD (applicant with history of delays in making applications who failed to seek judicial review promptly of Tribunal's decision that his appeal was out of time, despite previous warnings, refused relief although application within three-month time limit).

19 *R v Secretary of State for the Home Department, ex p Foster* (13 October 1998, unreported), QBD. In asylum and human rights cases the court will not normally be too rigorous in relation to delay, because of the potentially disastrous consequences (*Ahmad v Secretary of State for the Home Department* [1999] Imm AR 356, CA), but a late applicant for judicial review cannot rely on matters which have occurred during the period of delay (*Ahmad v Secretary of State for the Home Department* supra).

20 *Robinson v Secretary of State for the Home Department, Immigration Appeal Tribunal* [1997] Imm AR 568, CA. See also *R v Immigration Appeal Tribunal, ex p Arslan* [1997] Imm AR 63; *R v Special Adjudicator, ex p Kerrouche* [1998] INLR 88, IAT, CA; *R v Secretary of State for the Home Department, ex p Kolcak* [2001] Imm AR 666.

21 *R v Secretary of State for the Home Department, ex p Alabi* [1997] INLR 124, CA. If the parties cannot agree that the applicant may use the permission already obtained to advance a new challenge after reconsideration, the defendant should apply to set aside the permission and strike out the proceedings: *R v Secretary of State for the Home Department, ex p Alabi* supra. Where the decision-maker agrees to reconsider during the judicial review but reaches the same decision, he should make clear what material he has considered and the reasons for rejecting it: *R v Foreign and Commonwealth Office, ex p Nwanya* (17 February 2000, unreported), QBD.

22 *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, [1983] 2 WLR 321, HL; *R v Secretary of State for the Home Department, ex p Yilmaz* [1993] Imm AR 359; *R v Secretary of State for the Home Department, ex p Rahman* [1998] QB 136, [1997] Imm AR 197, CA. Cross-examination should not be used to shore up a weak case: *R v Secretary of State for the Home Department, ex p Rouse and Shrimpton* (1985) Times, 25 November, per Woolf J. Little assistance can be gained from cross-examination of witnesses through an interpreter, or for whom English is their second or third language: *R v Secretary of State for the Home Department, ex p Patel* [1986] Imm AR 208; affd [1986] Imm AR 515, CA. Where the allegation of deceit is based on failure to volunteer information, it is incumbent on the Secretary of State to face the claimant with the challenge of cross-examination: *Doldur v Secretary of State for the Home Department* [1998] Imm AR 352, CA. Home Office interviews at the port or in relation to variation of leave may be admitted, as may confidential medical records which go to the issue of whether a person is an impostor (subject to considerations of privacy under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 8): *R v Secretary of State for the Home Department, ex p Taj* (20 October 1999, unreported), QBD.

23 *Turgut v Secretary of State for the Home Department* [2000] Imm AR 306, CA; *Haile v Immigration Appeal Tribunal* [2001] EWCA Civ 663.

24 *R v Secretary of State for the Home Department, ex p Fayed* [1997] 1 All ER 228, [1998] 1 WLR 763, CA. But a claimant on judicial review is not automatically entitled to discovery of Home Office interview notes, particularly where he makes no allegation that his recollection of the interview differs from that of the person making a statement in the proceedings on behalf of the Secretary of State: *Yadvinder Singh v Secretary of State for the Home Department* [1988] Imm AR 480, CA. It is not appropriate for the court to be apprised of evidence which the Home Office would not release to the applicant for judicial review: *Hettierarachchi v Secretary of State for the Home Department* [1991] Imm AR 499, CA.

25 *R v Secretary of State for the Home Department, ex p Oral* (23 November 1990, unreported), CA.

26 *R v Secretary of State for the Home Department, ex p Muboyayi* [1992] QB 244 at 259, [1991] 4 All ER 72 at 82, CA, per Lord Donaldson of Lynton MR. Those wishing to apply for judicial review have three working days to submit an application and a day in which to obtain a High Court reference number: 389 HC Official Report (6th series), 24 July 2002, written answers col 1292.

27 *R v Secretary of State for Education and Science, ex p Avon County Council* [1991] 1 QB 558, [1991] 1 All ER 282, CA.

28 *R v Secretary of State for the Home Department, ex p Muboyayi* [1992] QB 244, [1991] 4 All ER 72, CA. Subject to the use of habeas corpus to prevent the removal of a person in respect of whom an application for judicial review is outstanding, the Court of Appeal held that the decision of the Secretary of State to refuse leave to enter or remain in the United Kingdom should be challenged by way of judicial review, and not by way of habeas corpus, where there is no doubt that the Secretary of State has power to make the decision, and the challenge is to the substance of the decision or the procedure he has adopted. In *Sheikh v Secretary of State for*

the Home Department [2001] Imm AR 219, the Court of Appeal held that a habeas corpus application made some time after the failure of a renewed application for judicial review was an abuse of process. As to the grant of bail pending judicial review or habeas corpus proceedings see para 218 post. As to habeas corpus generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 207 et seq.

UPDATE

173-195 Appeals

Immigration and Asylum Act 1999 Pt IV (ss 56-81), Schs 2-4 repealed: Nationality, Immigration and Asylum Act 2002 s 114(1). For provision in respect of immigration and asylum appeals see Pt 5 (ss 81-117); and PARAS 173A-173C. For transitional provision, see Sch 6.

195 Judicial review in the immigration context

NOTE 5--See *Tehrani v Secretary of State for the Home Department* [2006] UKHL 47, [2006] All ER (D) 201 (Oct) (Court of Session had no judicial review jurisdiction over Immigration Appeal Tribunal where decision appealed against taken in England). See also *R (on the application of G) v Immigration Appeal Tribunal*; *R (on the application of M) v Immigration Appeal Tribunal* [2004] EWCA Civ 1731, [2005] 2 All ER 165; *R (on the application of F (Mongolia)) v Asylum and Immigration Tribunal* [2007] EWCA Civ 769, [2007] 1 WLR 2523; *R (on the application of V) v Asylum and Immigration Tribunal* [2009] EWHC 1902 (Admin), [2009] All ER (D) 266 (Jul).

NOTE 8--See also *R (on the application of Husan) v Secretary of State for the Home Department* [2005] EWHC 189 (Admin), [2005] All ER (D) 371 (Feb).

NOTE 26--The lodging of a notice of appeal in the Court of Appeal when the refusal of a High Court judge to grant permission to apply for judicial review is under challenge is not to be interpreted as giving rise to an automatic stay of the deportation process: *R (on the application of Pharis) v Secretary of State for the Home Department* [2004] EWCA Civ 654, [2004] 3 All ER 310. See also *R (on the application of Bhandari) v Immigration Appeal Tribunal* [2004] EWHC 1711 (Admin), [2004] ACD 348.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(i) Offences and Liabilities/196. Place of offence and jurisdiction of court.

(5) OFFENCES

(i) Offences and Liabilities

196. Place of offence and jurisdiction of court.

Any act or omission which takes place outside the United Kingdom¹ in a control zone² and which would, if taking place in England, constitute an offence under a frontier control enactment³, or any act or omission which takes place outside the United Kingdom in a supplementary control zone⁴ and which would, if taking place in England, constitute an offence under an immigration control enactment⁵, is treated for the purposes of that enactment as taking place in England⁶.

Summary proceedings⁷ for anything that is by virtue of the provisions described above⁸ an offence triable summarily or triable either way⁹ may be taken, and the offence may for all

incidental purposes be treated as having been committed, in the county of Kent or in the inner London area¹⁰.

Where it is proposed to institute proceedings in respect of an alleged offence in any court and a question as to the court's jurisdiction arises¹¹, it is presumed, unless the contrary is proved, that the court has jurisdiction¹².

Things done outside the United Kingdom by a British citizen, a British overseas territories citizen, a British overseas citizen, a British subject or a British protected person, which constitute the offence of securing or facilitating illegal entry or the entry of asylum claimants, are triable in the United Kingdom¹³.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 For the meaning of 'control zone' see para 93 note 5 ante.

3 'Frontier control enactment' means an Act, or an instrument made under an Act, for the time being in force, which contains provision relating to frontier controls: Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 2(1), Sch 1. Frontier controls, so far as they constitute frontier controls within the meaning of the international articles, are controls in relation to persons or goods, police, immigration, customs, health, veterinary and phytosanitary, and transport and road traffic controls: Sch 1 (definition amended by SI 1996/2283).

For these purposes the 'international articles' means the provisions set out in the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 2(3), Sch 2: arts 1, 2(3), Sch 1. Schedule 2 sets out Articles of the Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning Frontier Controls and Policing, Co-operation in Criminal Justice, Public Safety and Mutual Assistance Relating to the Channel Fixed Link, 25 November 1991 (Cm 1802). For the meaning of 'Great Britain' see para 5 note 1 ante. In the international articles the expression the 'Fixed Link' has the same meaning as is given to 'tunnel system' by the Channel Tunnel Act 1987 s 1(7): Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 2(3), Sch 1.

'Tunnel system' means the tunnel rail link, together with its associated works, facilities and installations and incorporating: (1) tunnels under the English Channel between Cheriton, Folkestone, in Kent and Fréthun in the Pas de Calais, comprising two main tunnels capable of carrying both road traffic on shuttle trains and rail traffic, and an associated service tunnel; (2) two terminal areas, for controlling access to and egress from the tunnels, located at the portals of the tunnels in the vicinity of Cheriton, Folkestone and Fréthun respectively; (3) a service and maintenance area at the Old Dover Colliery site; (4) an inland clearance depot at Ashford, in Kent, for the accommodation, in connection with the application to them of customs and other controls, of freight vehicles which have been or are to be conveyed through the tunnels on shuttle services; (5) necessary links with the road and rail networks of each country; and (6) the fixed and movable equipment needed for the operation of the tunnels and the associated works, facilities and installations mentioned in heads (2)-(5) supra or for the operation of shuttle services using the tunnels: Channel Tunnel Act 1987 s 1(7) (definition applied by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 1). For the meaning of 'shuttle train' see para 87 note 5 ante.

4 For the meaning of 'supplementary control zone' see para 93 note 5 ante.

5 'Immigration control enactment' means an Act, or an instrument made under an Act, for the time being in force, which contains provision relating to frontier controls: Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 1 (definition added by SI 2001/1544).

6 Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 5(1) (amended by SI 2001/1544). See also the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 5. Any jurisdiction conferred by virtue of the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 5(1) (as amended) and art 5(1A) (as added) (see the text to notes 7-10 infra) on any court is without prejudice to any jurisdiction exercisable apart from art 5 (as amended) by that or any other court: art 5(2) (amended by SI 1994/1405).

7 As to summary proceedings see MAGISTRATES vol 29(2) (Reissue) para 681 et seq.

8 le by virtue of the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 5(1) (as amended): see the text to notes 1-6 supra.

9 As to offences triable summarily or triable either way see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1102 et seq; MAGISTRATES vol 29(2) (Reissue) para 653 et seq.

10 Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 5(1A) (added by SI 1994/1405). See note 6 *supra*. The inner London area consists of the inner London boroughs: see the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 5(1A) (as added) (applying the Justices of the Peace Act 1979 s 2(1)(a) (repealed)). As to the inner London boroughs see LONDON GOVERNMENT vol 29(2) (Reissue) para 30.

11 *Ie* under Article 38(2)(a) of the international articles.

12 Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 5(3). The text refers to the courts jurisdiction by virtue of Article 38(2)(a) of the international articles. As to jurisdiction when an offence is committed in the territory of the host state or the adjoining state see Article 38. An arrest is not affected by the fact that it continues in the territory of the other state: see Article 39. As to when the police and customs officers of one state may make arrests on the territory of the other state see Article 40. As to the requirements on arrest under Article 39 and Article 40 see Article 41. For the meanings of 'host state' and 'adjoining state' see para 93 note 5 *ante*.

13 See the Immigration Act 1971 s 25(1)(a), (b), (5) (as amended); and para 199 *post*.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(i) Offences and Liabilities/197. Illegal entry and similar offences.

197. Illegal entry and similar offences.

A person who is not a British citizen¹ is guilty of an offence² in any of the following cases³:

- 546 (1) if he knowingly enters the United Kingdom⁴ in breach of a deportation order or without leave⁵;
- 547 (2) if, having only a limited leave to enter or remain in the United Kingdom, he knowingly either (a) remains beyond the time limited by the leave⁶; or (b) fails to observe a condition of the leave⁷;
- 548 (3) if, having entered the United Kingdom as a member of a class of persons who may lawfully enter the United Kingdom without leave⁸, he remains without leave beyond the time allowed for that class⁹;
- 549 (4) if, without reasonable excuse, he fails to comply with any requirement imposed on him¹⁰ to report to a medical officer of health, or to attend, or submit to a test or examination, as required by such an officer¹¹;
- 550 (5) if, without reasonable excuse, he fails to observe any restriction imposed on him¹² as to residence, as to his employment or occupation or as to reporting to the police or to an immigration officer¹³;
- 551 (6) if he disembarks¹⁴ in the United Kingdom from a ship¹⁵ or aircraft¹⁶, or leaves a train in the United Kingdom, after being placed on board¹⁷ with a view to his removal from the United Kingdom¹⁸;
- 552 (7) if he embarks or leaves or seeks to leave the United Kingdom through the tunnel system¹⁹ in contravention of a restriction imposed by or under an Order in Council under the Immigration Act 1971²⁰.

1 As to British citizens see paras 8, 23-43 *ante*. As to persons who are subject to immigration control see para 84 *et seq ante*.

2 Such an offence is punishable on summary conviction with a fine of not more than level 5 on the standard scale or with imprisonment for not more than six months, or with both: Immigration Act 1971 s 24(1) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 2; the Asylum and Immigration Act 1996 s 61; and by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see para 81 note 2 *ante*.

As to the power of arrest see para 206 post. As to the procedure for offences triable summarily see MAGISTRATES vol 29(2) (Reissue) para 681 et seq.

3 Immigration Act 1971 s 24(1) (as amended: see note 2 supra).

4 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

5 Immigration Act 1971 s 24(1)(a). In proceedings for an offence under s 24(1)(a) of entering the United Kingdom without leave any stamp purporting to have been imprinted on a passport or other travel document by an immigration officer on a particular date for the purpose of giving leave is to be presumed to have been duly so imprinted, unless the contrary is proved (s 24(4)(a)); and proof that a person had leave to enter the United Kingdom lies on the defence if, but only if, he is shown to have entered within six months before the date when the proceedings were commenced (s 24(4)(b)). As to the reverse burden of proof and its compatibility with the presumption of innocence see *R v Lambert* [2001] UKHL 37, [2001] 3 All ER 577, [2001] 3 WLR 206.

As to the requirement of leave see para 86 ante. As to liability for deportation see para 160 ante. Although EEA nationals do not require leave to enter (see para 225 et seq post), the offence of illegal entry may be committed by an EEA national if he knowingly enters the United Kingdom having been deported: *Shingara v Secretary of State for the Home Department* [1999] Imm AR 257, CA. For the meaning of 'EEA national' see para 227 post.

The extended time limit for prosecutions which is provided for by the Immigration Act 1971 s 28 (as amended) (see para 201 post) applies to offences under s 24(1)(a) (as amended) and s 24(1)(c) (see the text to notes 8-9 infra): s 24(3) (amended by the Immigration Act 1988 s 6(2)).

6 Immigration Act 1971 s 24(1)(b)(i). A person commits an offence under s 24(1)(b)(i) on the day when he first knows that the time limited by his leave has expired and continues to commit it throughout any period during which he is in the United Kingdom thereafter: s 24(1A) (added by the Immigration Act 1988 s 6(1)). A person must not be prosecuted under the Immigration Act 1971 s 24(1)(b)(i) more than once in respect of the same limited leave: s 24(1A) (as so added).

Criminal liability requires knowledge of overstaying; and a person is capable of doing an act knowingly even though at the moment when he does it the relevant fact is not actually in his mind: *R v Bello* [1978] Crim LR 551, 67 Cr App Rep 288, CA (although the appellant was upset by his mother's death, he was capable of living a normal life). A person who applied for an extension of leave prior to the expiry of his leave has not committed the offence of overstaying under the Immigration Act 1971 s 24(1)(b)(i): see *Zoltak v Sussex Constabulary* [1983] CLY 1923 (conviction quashed).

7 Immigration Act 1971 s 24(1)(b)(ii). Failure to observe a condition of limited leave to remain is a continuing offence: *Manickavasagar v Metropolitan Police Comr* [1987] Crim LR 50, DC.

8 Ie by virtue of the Immigration Act 1971 s 8(1): see para 87 et seq ante.

9 Ibid s 24(1)(c). See note 5 supra. As to the circumstances in which a person may lawfully enter without leave see para 87 et seq ante.

10 Ie under ibid s 4(2), Sch 2 para 7 (as amended): see para 149 ante.

11 Ibid s 24(1)(d).

12 Ie under ibid Sch 2 para 21(2) (as amended) or s 5, Sch 3 para 2(5)(both as amended): see paras 166 ante, 212 post.

13 Ibid s 24(1)(e) (amended by the Immigration Act 1988 s 10, Schedule para 10(3), (4)).

14 For the meaning of 'disembark' see para 93 note 1 ante.

15 As to the meaning of 'ship' see para 87 note 2 ante.

16 As to the meaning of 'aircraft' see para 87 note 3 ante.

17 Ie under the Immigration Act 1971 Sch 2 (as amended) or Sch 3 (as amended): see para 152 ante.

18 Immigration Act 1971 s 24(1)(f) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(7) (a); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7).

19 For the meaning of 'tunnel system' see para 196 note 3 ante.

20 Immigration Act 1971 s 24(1)(g) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(7) (b); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7). The text refers to an Order in Council under the Immigration Act 1971 s 3(7) (as amended): see para 143 ante.

UPDATE

197 Illegal entry and similar offences

NOTES--The Secretary of State may require a local authority to supply information for the purpose of establishing where a person is if the Secretary of State reasonably suspects that (1) the person has committed an offence under the 1971 Act s 24(1)(a), (b), (c), (e) or (f), s 24A(1) or s 26(1)(c) or (d), and (2) the person is or has been resident in the local authority's area: Nationality, Immigration and Asylum Act 2002 s 129(1). A local authority must comply with such a requirements 129(2). 'Local authority' means: (a) a county council; (b) a county borough council; (c) a district council; (d) a London borough council; (e) the Common Council of the City of London; and (f) the Council of the Isles of Scilly: s 129(3).

As to the disclosure of information by employers where the Secretary of State reasonably suspects an employee of having committed an offence under the 1971 Act s 24(1)(a), (b), (c), (e) or (f), s 24A(1) or s 26(1)(c) or (d), see the 2002 Act ss 134, 136-139. As to the offence of attending a leave or asylum interview without a passport or other form of identification see PARA 197A.

TEXT AND NOTE 13--For 'or to an immigration officer' read 'to an immigration officer or to the Secretary of State': 1971 Act s 24(1)(e) (amended by the 2002 Act s 62(9)).

NOTES 18, 20--SI 2004/1405 art 7 amended: SI 2007/3579.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(i) Offences and Liabilities/197A. Entering United Kingdom without passport.

197A. Entering United Kingdom without passport.

A person commits an offence if, at a leave or asylum interview¹, he does not have with him² an immigration document³ which is in force and which satisfactorily establishes his identity and nationality or citizenship⁴. It is a defence to a person charged with such an offence (1) to prove that he is an EEA national⁵; (2) to prove that he is a member of the family of an EEA national and that he is exercising a right under the Community Treaties in respect of entry to or residence in the United Kingdom; (3) to prove that he has a reasonable excuse for not being in possession of a document of the required kind⁶; (4) to produce a false immigration document⁷ and to prove that he used that document as an immigration document for all purposes in connection with his journey to the United Kingdom; or (5) to prove that he travelled to the United Kingdom without, at any stage since he set out on the journey, having possession of an immigration document⁸.

A person commits an offence if, at a leave or asylum interview, he does not have with him, in respect of any dependent child with whom he claims to be travelling or living, an immigration document which is in force and which satisfactorily establishes the child's identity and nationality or citizenship⁹. It is a defence for a person charged with such an offence in respect of a child (a) to prove that the child is an EEA national; (b) to prove that the child is a member of the family of an EEA national and that the child is exercising a right under the Community

Treaties in respect of entry to or residence in the United Kingdom; (c) to prove that the person has a reasonable excuse for not being in possession of a document of the required kind¹⁰; (d) to produce a false immigration document and to prove that it was used as an immigration document for all purposes in connection with the child's journey to the United Kingdom; or (e) to prove that he travelled to the United Kingdom with the child without, at any stage since he set out on the journey, having possession of an immigration document in respect of the child¹¹.

A person does not commit either of the above offences if the interview takes place after the person has entered the United Kingdom¹² and, within the period of three days beginning with the date of the interview, the person provides to an immigration officer or to the Secretary of State a document of the required kind¹³. Where the charge for either of the above offences relates to an interview which takes place after the defendant has entered the United Kingdom, the defence in head (3) or (c) above, as the case may be, does not apply, but it is a defence for the defendant to prove that he has a reasonable excuse for not providing a document of the required kind¹⁴.

A person guilty of either of the above offences is liable (i) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both; or (ii) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both¹⁵. If an immigration officer reasonably suspects that a person has committed such an offence, he may arrest the person without warrant¹⁶.

1 In the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 2, 'leave or asylum interview' means an interview with an immigration officer or an official of the Secretary of State at which a person seeks leave to enter or remain in the United Kingdom or claims that to remove him from or require him to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention (see PARA 164) or would be unlawful under the Human Rights Act 1998 s 6 as being incompatible with his rights under the European Convention on Human Rights (see PARA 160 NOTE 39): 2004 Act s 2(12). For the meaning of 'immigration officer' see PARA 165A NOTE 8.

2 A person is presumed for the purposes of *ibid* s 2 not to have a document with him if he fails to produce it to an immigration officer or official of the Secretary of State on request: *ibid* s 2(8).

3 In *ibid* s 2, 'immigration document' means a passport and a document which relates to a national of a state other than the United Kingdom and which is designed to serve the same purpose as a passport: s 2(12).

4 *Ibid* s 2(1). See *R v Wang* [2005] EWCA Crim 293, [2005] 2 Cr App Rep (S) 492.

5 In the 2004 Act s 2, 'EEA national' means a national of a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as it has effect from time to time): 2004 Act s 2(12).

6 *Ibid* s 2(1). See *R v Mohammed; R v Osman* [2007] EWCA Crim 2332, [2008] 1 WLR 1130.

7 For the purposes of the 2004 Act s 2, a document which purports to be, or is designed to look like, an immigration document, is a false immigration document, and an immigration document is a false immigration document if and in so far as it is used (1) outside the period for which it is expressed to be valid; (2) contrary to provision for its use made by the person issuing it; or (3) by or in respect of a person other than the person to or for whom it was issued: s 2(13).

8 *Ibid* s 2(4).

9 *Ibid* s 2(2).

10 *Ibid* s 2(2).

11 *Ibid* s 2(5).

12 The 1971 Act s 11 (see PARA 93) has effect for the purpose of the construction of a reference in the 2004 Act s 2 to entering the United Kingdom: s 2(14).

13 *Ibid* s 2(1) or (2), as the case may be: s 2(3).

14 Ie one in accordance with *ibid* s 2(3): s 2(6). For the purposes of s 2(4)-(6), the fact that a document was deliberately destroyed or disposed of is not a reasonable excuse for not being in possession of it or for not providing it in accordance with s 2(3), unless it is shown that the destruction or disposal was (1) for a reasonable cause; or (2) beyond the control of the person charged with the offence: s 2(7)(a). For this purpose, 'reasonable cause' does not include the purpose of (a) delaying the handling or resolution of a claim or application or the taking of a decision; (b) increasing the chances of success of a claim or application; or (c) complying with instructions or advice given by a person who offers advice about, or facilitates, immigration into the United Kingdom, unless in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice: s 2(7)(b). See *R v Navabi*; *R v Embaye* [2005] EWCA Crim 2865, [2005] All ER (D) 151 (Nov); *Thet v DPP* [2006] EWHC 2701 (Admin), [2007] 2 All ER 425, DC (inability to obtain immigration documents in home country amounted to reasonable excuse).

15 2004 Act s 2(9). As to the statutory maximum see PARA 158 NOTE 20.

16 *Ibid* s 2(10) (amended by the Serious Organised Crime and Police Act 2005 Sch 7 para 63).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(i) Offences and Liabilities/198. Deception.

198. Deception.

A person who is not a British citizen¹ is guilty of an offence if, by means which include deception by him², he obtains or seeks to obtain leave to enter or remain in the United Kingdom³, or he secures or seeks to secure the avoidance, postponement or revocation of enforcement action⁴ against him⁵. A person guilty of such an offence is liable: (1) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum⁶, or to both⁷; or (2) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both⁸. The extended time limit for prosecutions⁹ applies to such an offence¹⁰.

1 As to British citizens see paras 8, 23-43 ante.

2 Immigration Act 1971 s 24A(1) (s 24A added by the Immigration and Asylum Act 1999 s 28).

3 Immigration Act 1971 s 24A(1)(a) (as added: see note 2 supra). As to the meaning of 'United Kingdom' see para 5 note 1 ante.

4 'Enforcement action', in relation to a person, means: (1) the giving of directions for his removal from the United Kingdom ('directions') under *ibid* s 4(2), Sch 2 (both as amended) (see para 152 et seq ante) or the Immigration and Asylum Act 1999 s 10 (see para 154 ante) (Immigration Act 1971 s 24A(2)(a) (as added: note 2 supra)); (2) the making of a deportation order against him under s 5 (as amended) (see para 160 ante) (s 24A(2)(b) (as so added)); or (3) his removal from the United Kingdom in consequence of directions or a deportation order (s 24A(2)(c) (as so added)).

5 *Ibid* s 24A(1)(b) (as added: see note 2 supra). See further para 151 ante.

6 As to the statutory maximum see para 158 note 20 ante.

7 Immigration Act 1971 s 24A(3)(a) (as added: see note 2 supra). As to the procedure for offences triable summarily see MAGISTRATES vol 29(2) (Reissue) para 681 et seq.

8 *Ibid* s 24A(3)(b) (as added: see note 2 supra). As to proceedings on indictment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1105, 1232 et seq.

9 Ie as provided by *ibid* s 28 (as amended): see para 201 post.

10 *Ibid* s 24A(4) (as added: see note 2 supra). As to defences, based on the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906), art 31(1), to offences and any attempt to commit an offence under the Immigration Act 1971 s 24A (as added) see para 205 post.

UPDATE

198 Deception

NOTES--See the Nationality, Immigration and Asylum Act 2002 ss 129, 134, 136-139; and PARA 197.

NOTE 8--A court, when sentencing a defendant for an offence under the 1971 Act s 24A, is not obliged to consider whether his asylum claim is genuine or to treat such a defendant as a person with a good asylum claim, such matters being for the immigration authorities when a claim comes before them: *R v Kishietine* (2004) Times, 9 December, CA. A custodial sentence is appropriate for an offence motivated by the desire to evade immigration law: *R v Mwangi* [2006] All ER (D) 114 (Sep), CA (obtaining a pecuniary advantage by deception; guilty plea).

TEXT AND NOTES 9, 10--1971 Act s 24A(4) repealed: 2002 Act s 156(2), Sch 9.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(i) Offences and Liabilities/199. Assisting illegal entry or the entry of asylum claimants and harbouring.

199. Assisting illegal entry or the entry of asylum claimants and harbouring.

Any person knowingly concerned in making or carrying out arrangements for securing or facilitating¹:

- 553 (1) the entry into the United Kingdom² of anyone whom he knows or has reasonable cause for believing to be an illegal entrant³;
- 554 (2) the entry into the United Kingdom of anyone whom he knows or has reasonable cause for believing to be an asylum claimant⁴; or
- 555 (3) the obtaining by anyone of leave to remain in the United Kingdom by means which he knows or has reasonable cause for believing to include deception⁵,

is guilty of an offence punishable on summary conviction with a fine of not more than the prescribed sum⁶ or with imprisonment for not more than six months, or with both, or on conviction on indictment with a fine or with imprisonment for not more than ten years, or with both⁷.

Head (2) above does not apply to anything which is done: (a) in relation to a person who has been detained or granted temporary admission under the Immigration Act 1971⁸; (b) by a person otherwise than for gain⁹; or (c) to assist an asylum claimant by a person in the course of his employment by a bona fide organisation, if the purposes of that organisation include assistance to persons in the position of the asylum claimant¹⁰.

Where a person convicted on indictment of an offence under head (1) or head (2) above is at the time of the offence¹¹: (i) the owner or one of the owners¹² of a ship¹³, aircraft¹⁴, through train¹⁵, shuttle train¹⁶ or vehicle used or intended to be used in carrying out the arrangements in respect of which the offence is committed¹⁷; or (ii) a director or manager of a company which is the owner or one of the owners of any such ship, aircraft, train or vehicle¹⁸; or (iii) captain¹⁹ of any such ship or aircraft or the train manager of any such train²⁰; or (iv) the driver of any such vehicle²¹, then the court before which he is convicted may order the forfeiture of the ship, aircraft, train or vehicle²².

The forfeiture of a ship, aircraft or train may not be so ordered²³: (A) if the ship or aircraft is over a certain weight²⁴; or (B) unless the person convicted is at the time of the offence the owner or one of the owners, or a director or manager of a company which is the owner or one of the owners, of the ship, aircraft, or train²⁵, or (C) unless, under the arrangements in respect of which the offence is committed, the ship, aircraft or train has been used for bringing more than 20 persons at one time to the United Kingdom as illegal entrants and the intention to use the ship, aircraft or train in bringing persons to the United Kingdom as illegal entrants was known to, or could by the exercise of reasonable diligence, have been discovered by, some person on whose conviction the ship or aircraft would have been liable to forfeiture under head (B) above²⁶.

If a person has been arrested for an offence under head (1) or head (2) above, a senior officer²⁷ or a constable²⁸ may detain a relevant ship, aircraft or vehicle²⁹ until a decision is taken as to whether or not to charge the arrested person with that offence³⁰, or if the arrested person has been charged, until he is acquitted, the charge against him is dismissed or the proceedings are discontinued, or if he has been convicted, until the court³¹ decides whether or not to order forfeiture of the ship, aircraft or vehicle³².

A person knowingly harbouring³³ anyone whom he knows or has reasonable cause for believing to be either an illegal entrant or a person who has committed the offence of knowingly remaining beyond the time limited by his leave to enter or remain in the United Kingdom or failing to observe a condition of the leave, or a member of a class of persons who may lawfully enter the United Kingdom without leave, remaining without leave beyond the time allowed³⁴, is guilty of an offence, punishable on summary conviction with a fine of not more than level 5 on the standard scale³⁵ or with imprisonment for not more than six months, or with both³⁶.

1 Immigration Act 1971 s 25(1).

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 Immigration Act 1971 s 25(1)(a) (s 25(1)(a)-(c) added by the Asylum and Immigration Act 1996 s 5(1)). For the meaning of 'illegal entrant' see para 151 ante.

The arrangements referred to in the Immigration Act 1971 s 25 (as amended) include plans for getting the entrant away as quickly as possible from the point of embarkation, even though the acts in question were done after the entrant had left that part of a port of entry which was subject to the control of the immigration authorities: *R v Singh*, *R v Meeuwssen* [1973] 1 All ER 122, [1972] 1 WLR 1600, CA.

Proof that those arrived are illegal entrants is required: see *R v Patel* [1981] 3 All ER 94, 73 Cr App Rep 117, CA. No offence is committed if those assisted did not attempt to enter the United Kingdom illegally, but merely approached an immigration officer without documents and claimed asylum: *R v Naillie*, *R v Kanesarajah* [1993] AC 674, [1993] 2 All ER 782, HL. An offence is, however, committed if intending immigrants are discovered before entry, in circumstances indicating an intention to enter illegally: *R v Adams* [1996] Crim LR 593, CA; *R v Eyck*, *R v Hadakoglu* [2000] 3 All ER 569, [2000] 1 WLR 1389, CA.

As to acts or omissions treated as taking place in England see the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 5 (as amended); and para 196 ante.

4 Immigration Act 1971 s 25(1)(b) (as added: see note 3 supra). See note 3 supra. An 'asylum claimant' means a person who intends to make a claim that it would be contrary to the United Kingdom's obligations under the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906) or the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) for him to be removed from, or required to leave, the United Kingdom: Immigration Act 1971 s 25(1D) (s 25(1B)-(1E) added by the Immigration and Asylum Act 1999 s 29(1), (3)); Immigration and Asylum Act 1999 s 167(1) (applied by the Immigration Act 1971 s 25(1E) (as so added)).

5 Immigration Act 1971 s 25(1)(c) (as added: see note 3 supra).

6 As to the prescribed sum see para 158 note 20 ante.

7 Immigration Act 1971 s 25(1) (amended by the Immigration and Asylum Act 1999 s 29(1), (2); and by virtue of the Magistrates' Courts Act 1980 s 32(2)). An immediate custodial sentence is appropriate for all but the most minor offences; the maximum sentence must accommodate offences with the most aggravating

features including where the offence has been repeated and the defendant has a record of violations under the Immigration Act 1971 s 25(1) (as amended), where the offence has been committed for financial gain, where the illegal entry has been facilitated for strangers rather than a spouse or close family member, where there is a high degree of planning, organisation and sophistication, where the defendant played a prominent role, where it is committed in relation to a large number of illegal entrants, where the defendant contested the charge and failed to earn the discount which a plea of guilty would have earned, and, in the case of a conspiracy, where the offence is committed over a period: *R v Le and Stark* [1999] 1 Cr App Rep (S) 422, [1999] Crim LR 96, CA. For the factors taken into account when sentencing see also *R v Bellikli* [1998] 1 Cr App Rep (S) 135, [1997] Crim LR 612, CA; *R v Ozdemir* [1996] 2 Cr App Rep (S) 64, CA; *R v Hussain (Matloob)* [1997] 1 Cr App Rep (S) 298, CA.

Offences under heads (1) and (2) in the text apply to things done outside as well as to things done in the United Kingdom where they are done: (1) by a British citizen (see paras 8, 23-43 ante), a British overseas territories citizen (see paras 8, 44-57 ante), a British Overseas citizen (see paras 8, 58-62 ante); (2) a British subject under the British Nationality Act 1981 (see paras 9, 66-71 ante); or (3) a British protected person under the British Nationality Act 1981 (see paras 10, 72-76 ante): Immigration Act 1971 s 25(5) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 6; the Immigration and Asylum Act 1999 s 29(1), (4); and by virtue of the British Overseas Territories Act 2002 s 2(3)).

As to the procedure for offences triable summarily see MAGISTRATES vol 29(2) (Reissue) para 681 et seq. As to proceedings on indictment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) paras 1105, 1232 et seq.

8 Immigration Act 1971 s 25(1A) (added by the Asylum and Immigration Act 1996 s 5(2); and substituted by the Immigration and Asylum Act 1999 s 29(1), (3)). The Immigration Act 1971 s 25(1A) (as added and substituted) is designed to prevent the criminalisation of persons advising on asylum claims.

9 Ibid s 25(1B) (s 25(1B)-(1E) added by the Immigration and Asylum Act 1999 s 29(1), (3)). Gain is an essential ingredient of the offence of facilitating the entry of asylum claimants under s 25(1)(b) (as added) (see the text and note 4 supra) and the burden of proof remains on the Crown to prove gain: see 573 HL Official Report (5th series), 20 June 1996, cols 570-574; *R v Duibi* (1999) reported in Legal Action (February 2000) 22. As to burden of proof see also *R v Lambert* [2001] UKHL 37, [2001] 3 All ER 577, [2001] 3 WLR 206.

10 Immigration Act 1971 s 25(1C) (as added: see note 9 supra).

11 Ibid s 25(6) (amended by the Asylum and Immigration Act 1996 s 5(4); and modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(8)(b); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7).

12 For the purposes of the Immigration Act 1971 s 25(6) (as amended) and s 25A(as added), 'owner', in relation to a ship, aircraft, train or vehicle which is the subject of a hire-purchase agreement, includes the person in possession of it under that agreement and, in relation to a ship, aircraft or train, includes a charterer: s 25(6) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(8)(b); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7); Immigration Act 1971 s 25A(7) (s 25A added by the Immigration and Asylum Act 1999 s 38(2), (4)). 'Vehicle' includes a railway vehicle capable of being uncoupled from a train and a road vehicle carried on a train: Immigration Act 1971 s 25(6) (definition added for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(8)(b)).

13 As to the meaning of 'ship' see para 87 note 2 ante.

14 As to the meaning of 'aircraft' see para 87 note 3 ante.

15 For the meaning of 'through train' see para 87 note 4 ante.

16 For the meaning of 'shuttle train' see para 87 note 5 ante.

17 Immigration Act 1971 s 25(6)(a) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(8)(b); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7).

18 Immigration Act 1971 s 25(6)(b) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(8)(b); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7).

19 For the meaning of 'captain' see para 87 note 1 ante.

20 Immigration Act 1971 s 25(6)(c) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(8)(b); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7). For the meaning of 'train manager' see para 87 note 1 ante.

21 Immigration Act 1971 s 25(6)(d) (added by the Immigration and Asylum Act 1999 s 38(1), (3)).

22 Immigration Act 1971 s 25(6) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(8)(b); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7). The Immigration Act 1971 s 25(6) is expressed to be subject to s 25(7) (see the text and notes 23-26 *infra*) or s 25(8). A court may not order such a ship, aircraft, train or vehicle to be forfeited under s 25(6) (as amended) where a person claiming to be the owner of the ship, aircraft, train or vehicle or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made: s 25(8) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(8)(d); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7).

23 Immigration Act 1971 s 25(7) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(8)(c); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7).

24 See the Immigration Act 1971 s 25(7)(a). A court may not order a ship or aircraft to be forfeited under s 25(6) on a person's conviction, unless, in the case of a ship it is less than 500 tons gross tonnage or, in the case of an aircraft (not being a hovercraft), it is of less than 5,700 kg operating weight: s 25(7)(a). For these purposes, 'operating weight' means, in relation to an aircraft, the maximum total weight of the aircraft and its contents at which the aircraft may take off anywhere in the world, in the most favourable circumstances, in accordance with the certificate of airworthiness in force in respect of the aircraft: s 25(7). Certificates of airworthiness are issued or validated under an Order in Council made under the Civil Aviation Act 1982 s 60 (as amended).

25 Immigration Act 1971 s 25(7)(b) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(8)(c); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7).

26 Immigration Act 1971 s 25(7)(c) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(8)(c); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7). As to illegal entry see para 151 ante.

27 'Senior officer' means an immigration officer not below the rank of chief immigration officer: Immigration Act 1971 s 25A(8) (as added: see note 12 *supra*).

28 As to the office of constable see generally POLICE vol 36(1) (2007 Reissue) para 101 et seq.

29 A ship, aircraft or vehicle is a relevant ship, aircraft or vehicle, in relation to an arrested person, if it is one which the officer or constable concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under the Immigration Act 1971 s 25(6): s 25A(2) (as added: see note 12 *supra*).

30 Ibid s 25A(1)(a) (as added: see note 12 *supra*). As to the application of s 25A (as added) to Scotland see s 25A(5), (6)(b) (as added); and as to the application of s 25A (as added) to Northern Ireland see s 25A(6)(c) (as added).

31 'Court' means: (1) if the arrested person has not been charged, the magistrates' court for the petty session area in which he was arrested; (2) if he has been charged but proceedings for the offence have not begun to be heard, the magistrates' court for the petty sessions area in which he was charged; (3) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings: *ibid* s 25A(6)(a) (as added: see note 12 *supra*). As to petty sessions areas see MAGISTRATES vol 29(2) (Reissue) para 591 et seq.

32 Ibid s 25A(1)(b) (s 25A as added: see note 12 *supra*). A person, other than the arrested person, who claims to be the owner of a ship, aircraft or vehicle which has been detained under s 25A (as added) may apply to the court for its release: s 25A(3) (as so added). The court to which an application is made under s 25A(3) (as added) may, on such security or surety being tendered as it considers satisfactory, release the ship, aircraft or vehicle on condition that it is made available to the court if the arrested person is convicted, and an order for its forfeiture is made under s 25(6) (as amended) (see the text and notes 12-22 *supra*): s 25A(4) (as so added). For the meaning of 'owner' see note 12 *supra*.

33 'Harbouring' has its natural meaning of giving shelter: *R v Mistry, R v Asare* [1980] Crim LR 177, CA; *Darch v Weight* [1984] 2 All ER 245, [1984] 1 WLR 659, DC.

34 le offences under the Immigration Act 1971 s 24(1)(b) or s 24(1)(c): see para 197 ante.

35 As to the standard scale see para 81 note 2 ante.

36 Immigration Act 1971 s 25(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). The Immigration Act 1971 s 25(2) (as amended) is expressed to be without prejudice to s 25(1) (as amended): see the text and notes 1-7 supra.

An information which does not specify which limb of the offence is being relied upon is bad for duplicity: *Rahman and Qadir v DPP* [1993] Crim LR 874. As to informations see MAGISTRATES vol 29(2) (Reissue) para 681 et seq.

The extended time limit for prosecutions which is provided for by the Immigration Act 1971 s 28 (as amended) (see para 201 post) applies to offences under s 25 (as amended): s 25(4).

UPDATE

199 Assisting illegal entry or the entry of asylum claimants and harbouring

TEXT AND NOTES--Immigration Act 1971 s 25 replaced by ss 25, 25A-25C (substituted by the Nationality, Immigration and Asylum Act 2002 s 143). The 1971 Act s 25 (amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 1(1); and the UK Borders Act 2007 s 30(1)) makes it an offence knowingly to facilitate immigration in breach of the laws of any member state, and extends this to states on a list prescribed for the purposes of s 1 by order of the Secretary of State; see the Immigration (Assisting Unlawful Immigration) (Section 25 Schengen Acquis States) Order 2004, SI 2004/2877; s 25A (amended by 2007 Act ss 29, 30(2)) makes provision in relation to the offence of helping an asylum-seeker to enter the United Kingdom for gain; 1971 Act s 25B (amended by 2007 Act s 30(2)) makes it an offence to assist entry to the United Kingdom by a European citizen in breach of a deportation or exclusion order; and 1971 Act s 25C makes provision in relation to the forfeiture of a vehicle used in connection with an offence under s 25, 25A or 25B (amended by the 2004 Act s 1(2)). The existing 1971 Act s 25A (see TEXT AND NOTES 27-32) is renumbered as s 25D: 2002 Act s 144(2). See *R v Javaherifard* [2005] EWCA Crim 3231, [2005] All ER (D) 213 (Dec).

NOTES--SI 2004/1405 art 7 amended: SI 2007/3579.

NOTE 7--Since the offence of assisting illegal immigrants to enter the United Kingdom is prevalent, a deterrent sentence of two and a half years' imprisonment may be imposed: *R v Toor* [2003] EWCA Crim 185, [2003] 2 Cr App Rep (S) 349.

NOTE 10--See also *R (on the application of Bhatti) v Croydon Magistrates' Court* [2009] All ER (D) 88 (Nov), DC.

NOTE 12--A reference to being an 'owner' of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it: 1971 Act s 33(1A) (added by the 2002 Act s 144(8)). 1971 Act s 25D(7) (s 25D as renumbered: see TEXT AND NOTES) repealed: 2002 Act s 144(2)(d).

TEXT AND NOTE 27--For 'under head (1) or head (2)' read 'under the 1971 Act s 25, 25A or 25B' (see TEXT AND NOTES): s 25D(1) (s 25D as renumbered: see TEXT AND NOTES; s 25D(1) amended by the 2002 Act s 144(2)(a)).

NOTE 29--Reference to 1971 Act s 25(6) is now to s 25C (see TEXT AND NOTES): s 25D(2) (s 25D as renumbered (see TEXT AND NOTES); s 25D(2) amended by the 2002 Act s 144(2)(b)).

NOTE 31--'Court' now means (1) if the arrested person has not been charged, or he has been charged but proceedings for the offence have not begun to be heard, a magistrates' court; (2) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings: 1971 Act s 25D(6)(a) (s 25D as renumbered (see TEXT AND NOTES); s 25D(6)(a) amended by the Courts Act 2003 Sch 8 para 148(2)).

NOTE 32--1971 Act s 25D(3) (s 25D as renumbered: see TEXT AND NOTES) substituted: 2002 Act s 144(2)(c). Now, a person, other than the arrested person, may apply to the court for the release of a ship, aircraft or vehicle on the grounds that (1) he owns the ship, aircraft or vehicle; (2) he was, immediately before the detention of the ship, aircraft or vehicle, in possession of it under a hire-purchase agreement; or (3) he is a charterer of the ship or aircraft: 1971 Act s 25D(3) (as so renumbered and substituted). In s 25D(4) (s 25D as renumbered; s 25D(4) amended by the 2002 Act s 144(2)(b)) reference to the 1971 Act s 25(6) is now to s 25C (see TEXT AND NOTES).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(i) Offences and Liabilities/199A. Trafficking people for exploitation.

199A. Trafficking people for exploitation.

A person commits an offence if he arranges or facilitates (1) the arrival in, or the entry into, the United Kingdom of a passenger and he intends to exploit¹ the passenger in the United Kingdom or elsewhere², or he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere³; (2) travel within the United Kingdom by the passenger in respect of whom he believes that an offence under head (1) may have been committed and he intends to exploit the passenger in the United Kingdom or elsewhere⁴, or he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere⁵; and (3) the departure from the United Kingdom of a passenger and he intends to exploit the passenger outside the United Kingdom⁶ or he believes that another person is likely to exploit the passenger outside the United Kingdom⁷. A person found guilty of an offence is liable on conviction on indictment to imprisonment for a term not exceeding 14 years, to a fine or to both⁸, or on summary conviction to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both⁹.

1 A person is exploited if (a) he is the victim of behaviour that contravenes the Human Rights Convention Article 4 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS), (b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organ Transplants Act 1989 or under the Human Tissue Act 2004 s 32 or 33 (see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARAS 272, 273); (c) he is subjected to force, threats or deception designed to induce him (i) to provide services of any kind, (ii) to provide another person with benefits of any kind, or (iii) to enable another person to acquire benefits of any kind; or (d) a person uses or attempts to use him for any purpose within heads (c)(i)-(iii), having chosen him for that purpose on the grounds that he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and a person without the illness, disability, youth or family relationship would be likely to refuse to be used for that purpose: Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 4(4) (amended by the Human Tissue Act 2004 s 56, Sch 6 para 7; Borders, Citizenship and Immigration Act 2009 s 54).

2 Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 4(1)(a).

3 Ibid s 4(1)(b) (amended by UK Borders Act 2007 s 31(1)).

4 2004 Act s 4(2)(a).

5 Ibid s 4(2)(b).

6 Ibid s 4(3)(a).

7 Ibid s 4(3)(b).

Section 4(1)-(3) applies to anything done whether inside or outside the United Kingdom: s 5(1) (substituted, for s 5(1), (2) as originally enacted, by 2007 Act s 31(2)).

8 2004 Act s 4(5)(a).

9 Ibid s 4(5)(b).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(i) Offences and Liabilities/200. Offences in connection with the employment of persons subject to immigration control.

200. Offences in connection with the employment of persons subject to immigration control.

If any person ('the employer') employs¹ a person subject to immigration control² ('the employee') who has attained the age of 16, the employer is guilty of an offence if: (1) the employee has not been granted leave to enter or remain in the United Kingdom³; or (2) the employee's leave is not valid and subsisting, or is subject to a condition precluding him from taking up the employment⁴, and, in either case, the employee does not satisfy such conditions as may be specified in an order made by the Secretary of State⁵. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale⁶. Where such an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or by any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly⁷.

It is a defence to prove that: (a) before the employment began, a document was produced to the employer which appeared to him to relate to the employee and to be of a description specified in an order made by the Secretary of State⁸; and (b) either the document was retained by the employer, or a copy or other record of it was made by the employer in a manner specified in the order in relation to documents of that description⁹. The defence is not, however, available in any case where the employer knew that his employment of the employee would constitute an offence¹⁰.

The Secretary of State must issue a code of practice¹¹ as to the measures which an employer is to be expected to take, or not to take, with a view to securing that, while avoiding the commission of such an offence, he also avoids unlawful discrimination¹².

A failure on the part of any person to observe a provision of the code does not of itself make him liable to any proceedings¹³.

1 For these purposes, 'employ' means employ under a contract of employment and 'employment' is to be construed accordingly: Asylum and Immigration Act 1996 s 8(8). 'Contract of employment' means a contract of service or apprenticeship, whether express or implied, and, if it is express, whether it is oral or in writing: s 8(8). As to contracts of employment see further EMPLOYMENT vol 39 (2009) PARA 1 et seq.

Section 8 does not apply to employment which began before 27 January 1997: Asylum and Immigration Act 1996 (Commencement No 3 and Transitional Provisions) Order 1996, SI 1996/2970.

2 'Person subject to immigration control' means a person who, under the Immigration Act 1971, requires leave to enter or remain in the United Kingdom (whether or not such leave has been given): Asylum and Immigration Act 1996 s 13(2). As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 Ibid s 8(1)(a).

4 Ibid s 8(1)(b).

5 Ibid s 8(1). As to the Secretary of State see para 2 ante. An order under s 8 must be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 8(7). In exercise of the powers conferred upon him by s 8(1) and s 8(2) (see the text to notes 8-9 infra), the Secretary of State has made the Immigration (Restrictions on Employment) Order 1996, SI 1996/3225 (amended by virtue of the British Overseas Territories Act 2002 s 2(3)).

The conditions specified under the Asylum and Immigration Act 1996 s 8(1) are that: (1) the employee has made a claim for asylum, which has not been finally determined or abandoned, and has been given written permission to work by the Home Office (Immigration (Restrictions on Employment) Order 1996, SI 1996/3225, art 2(1), Schedule Pt I para 1); (2) an appeal pending and, before notice of appeal was given, the employee had leave to enter or remain in the United Kingdom which did not preclude his taking the employment in question (Schedule Pt I para 2); or (3) the employee is permitted to work under the Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') (Immigration (Restrictions on Employment) Order 1996, SI 1996/3225, Schedule Pt I para 3). Schedule Pt I para 2 refers to appeals under the Immigration Act 1971 Pt II (ss 12-23), but this has now been repealed. As to appeals see now the Immigration and Asylum Act 1999 Pt IV (ss 56-81) (as amended); and para 173 et seq ante.

6 Asylum and Immigration Act 1996 s 8(4). As to the standard scale see para 81 note 2 ante. As to the procedure for offences triable summarily see MAGISTRATES vol 29(2) (Reissue) para 681 et seq.

7 Ibid s 8(5). Where the affairs of a body corporate are managed by its members, s 8(5) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 8(6).

8 Ibid s 8(2)(a). See note 5 supra. The following documents have been specified under s 8(2)(a): (1) a document issued by a previous employer, the Inland Revenue, the Benefits Agency, the Contributions Agency, the Employment Service, the Training and Employment Agency (Northern Ireland) or the Northern Ireland Social Security Agency which contains the national insurance number of the person named in the document (Immigration (Restrictions on Employment) Order 1996, SI 1996/3225, art 2(2), Schedule Pt II para 1); (2) a passport which describes the holder as a British citizen or as having a right of abode in, or an entitlement to readmission to, the United Kingdom (Schedule Pt II para 2); (3) a passport which contains a certificate of entitlement issued by, or on behalf of, the government of the United Kingdom certifying that the holder has the right of abode in the United Kingdom (Schedule Pt II para 3); (4) a certificate of registration or naturalisation as a British citizen (Schedule Pt II para 4); (5) a birth certificate issued in the United Kingdom, the Republic of Ireland, the Channel Islands or the Isle of Man (Schedule Pt II para 5); (6) a passport or national identity card, issued by a state which is a party to the Agreement on the European Economic Area (Oporto, 2 May 1992; OJ L1, 3.1.94, p 3; Cm 2073) (see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 23), which describes the holder as a national of a state which is a party to that Agreement (Immigration (Restrictions on Employment) Order 1996, SI 1996/3225, Schedule Pt II para 6); (7) a passport or other travel document which is indorsed to show that the holder is exempt from immigration control, has indefinite leave to enter, or remain in, the United Kingdom, or has no time limit on his stay; or a letter issued by the Home Office which contains that information (Schedule Pt II para 7); (8) a passport or other travel document which is indorsed to show that the holder has current leave to enter, or remain in, the United Kingdom and is not precluded from taking the employment in question; or a letter issued by the Home Office which contains that information (Schedule Pt II para 8); (9) a United Kingdom residence permit issued to a national of a state which is a party to the European Economic Area Agreement (Immigration (Restrictions on Employment) Order 1996, SI 1996/3225, Schedule Pt II para 9); (10) a passport or other travel document which is indorsed to show that the holder has a current right of residence in the United Kingdom as the family member of a named national of a state which is a party to the Economic Area Agreement and who is resident in the United Kingdom (Immigration (Restrictions on Employment) Order 1996, SI 1996/3225, Schedule Pt II para 10); (11) a letter issued by the Home Office which indicates that the person named in it is a British citizen or has permission to take employment (Schedule Pt II para 11); (12) a work permit or other approval to take employment (Schedule Pt II para 12); or (13) a passport which describes the holder as a British overseas territories citizen and which indicates that that status derives from a connection with Gibraltar (Schedule Pt II para 13 (amended by virtue of the British Overseas Territories Act 2002 s 2(3))).

As to the Commissioners of Inland Revenue see INCOME TAXATION vol 23(1) (Reissue) para 31 et seq. As to the Benefits Agency and the Contributions Agency see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 504. As to national insurance numbers see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 52. As to the general requirements for admission to the United Kingdom see para 93 et seq ante. As to British citizens see paras 8, 23-43 ante. As to the right of abode see para 85 ante. For the meaning of 'certificate of entitlement' see para 85 note 13 ante. As to a certificate of registration or naturalisation see paras 39, 97 ante. As to the Home Office see para 1 ante. As to the Home Office Immigration and Nationality Directorate see para 1 ante. As

to persons coming for employment which requires a work permit see paras 109-110 ante. As to British overseas territories citizens see paras 8, 44-57 ante.

9 Asylum and Immigration Act 1996 s 8(2)(b). See note 5 supra. For the purposes of s 8(2)(b), the manner of copying or recording specified documents is as follows: (1) in the case of a passport or other travel document, the following parts must be photocopied or scanned into a computer database, using the technology known as 'Write Once Read Many': (a) the front cover; (b) the pages containing the holder's personal details including nationality; (c) the page containing the holder's photograph or signature; and (d) the pages containing the information referred to in the Immigration (Restrictions on Employment) Order 1996, SI 1996/3225, Schedule Pt II paras 2 (other than citizenship), 3, 7, 8 or 10 (see note 5 supra) (art 2(3), Schedule Pt III para 1); or (2) all other documents must be photocopied or scanned into a computer database, using 'Write Once Read Many' (Schedule Pt III para 2).

10 Asylum and Immigration Act 1996 s 8(3).

11 Before issuing the code, the Secretary of State must prepare and publish a draft of the proposed code, and consider any representations about it which are made to him: *ibid* s 8A(3) (s 8A added by Immigration and Asylum Act 1999 s 22). In preparing the draft, the Secretary of State must consult: (1) the Commission for Racial Equality (see DISCRIMINATION vol 13 (2007 Reissue) para 488 et seq); (2) the Equality Commission for Northern Ireland (see CONSTITUTIONAL LAW AND HUMAN RIGHTS); and (3) such organisations and bodies (including organisations or associations of organisations representative of employers or of workers) as he considers appropriate: Asylum and Immigration Act 1996 s 8A(4) (as so added). The draft code may contain modifications to the original proposals made in the light of representations to the Secretary of State: s 8A(6) (as so added). If the Secretary of State decides to proceed with the code, he must lay a draft of the code before both Houses of Parliament: s 8A(5) (as so added). The Secretary of State may then bring the code into operation by an order made by statutory instrument: s 8A(7) (as so added). An order under s 8A(7) (as added) is subject to annulment in pursuance of a resolution of either House of Parliament, and may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the code: s 8A(8) (as so added). The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised: s 8A(12) (as so added). The provisions of s 8A (as added) also apply (with appropriate modifications) to any revision, or proposed revision, of the code: s 8A(13) (as so added).

12 *Ibid* s 8A(1) (as added: see note 11 supra). 'Unlawful discrimination' means discrimination in contravention of the Race Relations Act 1976 s 4(1) (see DISCRIMINATION vol 13 (2007 Reissue) para 446) or, in relation to Northern Ireland, discrimination in contravention of the Race Relations (Northern Ireland) Order 1997, SI 1997/869 (NI 6), art 6(1): Asylum and Immigration Act 1996 s 8A(2) (as so added).

In exercise of the powers conferred upon him by s 8A (as added), the Secretary of State has made the Immigration (Restrictions on Employment) (Code of Practice) Order 2001, SI 2001/1436.

13 Asylum and Immigration Act 1996 s 8A(9) (s 8A as added: see note 11 supra). The code is admissible in evidence in proceedings under the Race Relations Act 1976 before an employment tribunal, or in proceedings under the Race Relations (Northern Ireland) Order 1997, SI 1997/869 (NI 6) (as amended) before an industrial tribunal: Asylum and Immigration Act 1996 s 8A(10) (as so added). If any provision of the code appears to the tribunal to be relevant to any question arising in such proceedings, that provision is to be taken into account in determining the question: s 8A(11) (as so added). As to Employment Tribunals see EMPLOYMENT vol 41 (2009) PARA 1363 et seq.

UPDATE

200 Offences in connection with the employment of persons subject to immigration control

TEXT AND NOTES--Asylum and Immigration Act 1996 ss 8, 8A repealed: Immigration, Asylum and Nationality Act 2006 s 26, Sch 3. See further PARA 200A.

An offence under the 1971 Act s 8 is treated as a relevant offence for the purpose of ss 28B, 28D, and an offence under Pt III for the purposes of ss 28E, 28G and 28H: 1996 Act s 8(10) (added by the Nationality, Immigration and Asylum Act 2002 s 147(4)).

As to regulations made under the 1996 Act s 8(1), (2A), see the Immigration (Restrictions on Employment) Order 2004, SI 2004/755.

TEXT AND NOTE 6--A person guilty of such an offence is now liable (1) on conviction on indictment, to a fine; or (2) on summary conviction, to a fine not exceeding the

statutory maximum: 1996 Act s 8(4) (substituted by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 6(1)). As to the statutory maximum see PARA 158 NOTE 20.

NOTE 7--Where an offence under the 1996 Act s 8 is committed by a partnership (other than a limited partnership) each partner is guilty of the offence and is liable to be proceeded against and punished accordingly: s 8(6A) (added by the 2002 Act s 147(3)). This provision has effect in relation to a limited partnership as if a reference to a body corporate were a reference to a limited partnership, and a reference to an officer of the body were a reference to a partner: 1996 Act s 8(6B) (added by the 2002 Act s 147(3)).

TEXT AND NOTES 8, 9--Now, it is a defence for a person charged with an offence under s 8 to prove that before the employment began any relevant requirement of an order of the Secretary of State under s 8(2A) was complied with: s 8(2) (substituted by the 2002 Act s 147(2)). Such an order may (1) require the production to an employer of a document of a specified description; (2) require the production to an employer of one document of each of a number of specified descriptions; (3) require an employer to take specified steps to retain, copy or record the content of a document produced to him in accordance with the order; (4) make provision which applies generally or only in specified circumstances; and (5) make different provision for different circumstances: 1996 Act s 8(2A) (added by the 2002 Act s 147(2)).

NOTE 11--Reference to Commission for Racial Equality now to Commission for Equality and Human Rights: 1996 Act s 8A(4) (amended by Equality Act 2006 Sch 3 para 58).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(i) Offences and Liabilities/200A. Employment.

200A. Employment.

1. Penalty

It is contrary to the following provisions¹ to employ an adult² subject to immigration control³ if (1) he has not been granted leave to enter or remain in the United Kingdom, or (2) his leave to enter or remain in the United Kingdom (a) is invalid, (b) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or (c) is subject to a condition preventing him from accepting the employment⁴. The Secretary of State may give an employer who acts contrary to these provisions a notice requiring him to pay a penalty of a specified amount not exceeding the prescribed⁵ maximum⁶. An employer is excused from paying a penalty if he shows that he complied with any prescribed requirements in relation to the employment⁷. The Secretary of State may give a penalty notice without having established whether the above provision⁸ applies⁹. A penalty notice must (i) state why the Secretary of State thinks the employer is liable to the penalty, (ii) state the amount of the penalty, (iii) specify a date, at least 28 days after the date specified in the notice as the date on which it is given, before which the penalty must be paid, (iv) specify how the penalty must be paid, (v) explain how the employer may object to the penalty, and (vi) explain how the Secretary of State may enforce the penalty¹⁰. An order prescribing requirements¹¹ may, in particular (A) require the production to an employer of a document of a specified description; (B) require the production to an employer of one document of each of a number of specified descriptions; (C) require an employer to take specified steps to verify, retain, copy or record the content of a document produced to him in accordance with the order; (D) require action to be taken before

employment begins; (E) require action to be taken at specified intervals or on specified occasions during the course of employment¹².

1 Ie the Immigration, Asylum and Nationality Act 2006 s 15.

2 'Adult' means a person who has attained the age of 16: ibid s 25(a).

3 A person is subject to immigration control if under the Immigration Act 1971 he requires leave to enter or remain in the United Kingdom: 2006 Act s 25(c).

4 Ibid s 15(1). A reference to employment is to employment under a contract of service or apprenticeship, whether express or implied and whether oral or written: s 25(b). For provision as to temporary admission see s 24.

5 'Prescribed' means prescribed by order of the Secretary of State: ibid s 25(d). As to orders under s 15 generally see s 20.

6 Ibid s 15(2). The prescribed maximum is £10,000: Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) Order 2008, SI 2008/132.

7 2006 Act s 15(3). The excuse in s 15(3) does not apply to an employer who knew, at any time during the period of the employment, that it was contrary to s 15: s 15(4). For the requirements so prescribed see the Immigration (Restrictions on Employment) Order 2007, SI 2007/3290, arts 3-7, Schedule (amended by SI 2009/2908).

8 Ie 2006 Act s 15(3).

9 Ibid s 15(5).

10 Ibid s 15(6).

11 Ie for the purposes of ibid s 15(3).

12 Ibid s 15(7).

2. Objection

The following provisions¹ apply where an employer to whom a penalty notice is given objects on the ground that (1) he is not liable to the imposition of a penalty, (2) he is excused payment², or (3) the amount of the penalty is too high³. The employer may give a notice of objection to the Secretary of State⁴. A notice of objection must (a) be in writing, (b) give the objector's reasons, (c) be given in the prescribed⁵ manner, and (d) be given before the end of the prescribed period⁶. Where the Secretary of State receives a notice of objection to a penalty he must consider it and (i) cancel the penalty, (ii) reduce the penalty, (iii) increase the penalty, or (iv) determine to take no action⁷. Where the Secretary of State considers a notice of objection he must (A) have regard to the code of practice⁸ (in so far as the objection relates to the amount of the penalty), (B) inform the objector of his decision before the end of the prescribed period or such longer period as he may agree with the objector, (C) if he increases the penalty, issue a new penalty notice⁹, and (D) if he reduces the penalty, notify the objector of the reduced amount¹⁰.

1 Ie the Immigration, Asylum and Nationality Act 2006 s 16.

2 By virtue of ibid s 15(3) (see PARA 200A.1).

3 Ibid s 16(1).

4 Ibid s 16(2).

5 For the meaning of 'prescribed' see PARA 200A.1.

6 2006 Act s 16(3). For the manner and period of the notice so prescribed see the Immigration (Restrictions on Employment) Order 2007, SI 2007/3290, arts 8, 9. As to orders under the 2006 Act s 16 generally see s 20.

7 Ibid s 16(4).

8 Under ibid s 19 (see PARA 200A.5).

9 Under ibid s 15 (see PARA 200A.1).

10 Ibid s 16(5). For the period so prescribed see the Immigration (Restrictions on Employment) Order 2007, SI 2007/3290, art 10.

3. Appeal

An employer to whom a penalty notice is given may appeal to the court¹ on the ground that (1) he is not liable to the imposition of a penalty, (2) he is excused payment², or (3) the amount of the penalty is too high³. The court may (a) allow the appeal and cancel the penalty, (b) allow the appeal and reduce the penalty, or (c) dismiss the appeal⁴. An appeal is a re-hearing of the Secretary of State's decision to impose a penalty and must be determined having regard to (i) the code of practice⁵ that has effect at the time of the appeal (in so far as the appeal relates to the amount of the penalty), and (ii) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware); and this provision has effect despite any provision of rules of court⁶. An appeal must be brought within the period of 28 days beginning with (A) the date specified in the penalty notice as the date upon which it is given, or (B) if the employer gives a notice of objection and the Secretary of State reduces the penalty, the date specified in the notice of reduction as the date upon which it is given, or (C) if the employer gives a notice of objection and the Secretary of State determines to take no action, the date specified in the notice of that determination as the date upon which it is given⁷. An appeal may be brought by an employer whether or not (aa) he has given a notice of objection⁸; (bb) the penalty has been increased or reduced⁹.

1 In the Immigration, Asylum and Nationality Act 2006 s 17 'the court' means where the employer has his principal place of business in England and Wales, a county court: s 17(6).

2 By virtue of ibid s 15(3) (see PARA 200A.1).

3 Ibid s 17(1).

4 Ibid s 17(2).

5 Under ibid s 19 (see PARA 200A.5).

6 Ibid s 17(3).

7 Ibid s 17(4).

8 Under ibid s 16 (see PARA 200A.2).

9 Under ibid s 16: s 17(5).

4. Enforcement

A sum payable to the Secretary of State as a penalty¹ may be recovered by the Secretary of State as a debt due to him². In proceedings for the enforcement of a penalty no question may be raised as to (1) liability to the imposition of the penalty, (2) the application of the excuse³, or (3) the amount of the penalty⁴. Money paid to the Secretary of State by way of penalty is paid into the Consolidated Fund⁵.

- 1 Under the Immigration, Asylum and Nationality Act 2006 s 15 (see PARA 200A.1).
- 2 Ibid s 18(1).
- 3 In ibid s 15(3) (see PARA 200A.1).
- 4 Ibid s 18(2).
- 5 Ibid s 18(3).

5. Code of practice

The Secretary of State must issue a code of practice specifying factors to be considered by him in determining the amount of a penalty imposed¹. The code (1) must not be issued unless a draft has been laid before Parliament, and (2) must come into force in accordance with provision made by order of the Secretary of State². The Secretary of State must from time to time review the code and may revise and re-issue it following a review; and a reference in these provisions to the code includes a reference to the code as revised³.

- 1 Under the Immigration, Asylum and Nationality Act 2006 s 15 (see PARA 200A.1): s 19(1).
- 2 Ibid s 19(2). For provision as to the commencement of the code so made see the Immigration (Restrictions on Employment) Order 2007, SI 2007/3290, art 11. As to orders under s 19 generally see s 20.
- 3 Ibid the 2006 Act s 19(3).

6. Offence

A person commits an offence if he employs another ('the employee') knowing that the employee is an adult¹ subject to immigration control² and that (1) he has not been granted leave to enter or remain in the United Kingdom, or (2) his leave to enter or remain in the United Kingdom (a) is invalid, (b) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or (c) is subject to a condition preventing him from accepting the employment³. A person guilty of an offence under these provisions is liable (i) on conviction on indictment (A) to imprisonment for a term not exceeding two years, (B) to a fine, or (C) to both, or (ii) on summary conviction (aa) to imprisonment for a term not exceeding 12 months in England and Wales, (bb) to a fine not exceeding the statutory maximum⁴, or (cc) to both⁵.

- 1 For the meaning of 'adult' see PARA 200A.1.
- 2 For the meaning of 'subject to immigration control' see PARA 200A.1.
- 3 Immigration, Asylum and Nationality Act 2006 s 21(1). As to 'employment' see PARA 200A.1. For provision as to temporary admission see s 24.

For the purposes of s 21(1) a body (whether corporate or not) is not to be treated as knowing a fact about an employee if a person who has responsibility within the body for an aspect of the employment knows the fact: s 22(1). If an offence under s 21(1) is committed by a body corporate with the consent or connivance of an officer of the body, the officer, as well as the body, is to be treated as having committed the offence: s 22(2). In s 22(2) a reference to an officer of a body includes a reference to (1) a director, manager or secretary, (2) a person purporting to act as a director, manager or secretary, and (3) if the affairs of the body are managed by its members, a member: s 22(3). Where an offence under s 21(1) is committed by a partnership (whether or not a limited partnership) s 22(2) has effect, but as if a reference to an officer of the body were a reference to (a) a partner, and (b) a person purporting to act as a partner: s 22(4).

- 4 As to the statutory maximum see PARA 158.
- 5 2006 Act s 21(2).

An offence under s 21 is to be treated as (1) a relevant offence for the purpose of the Immigration Act 1971 ss 28B and 28D (search, entry and arrest), and (2) an offence under the 1971 Act Pt 3 (criminal proceedings) for the purposes of ss 28E, 28G and 28H (search after arrest): 2006 Act s 21(3).

In relation to a conviction occurring before the commencement of the Criminal Justice Act 2003 s 154(1) (general limit on magistrates' powers to imprison) the reference to 12 months in head (aa) in the text is to be taken as a reference to six months: 2006 Act s 21(4).

7. Discrimination: code of practice

The Secretary of State must issue a code of practice specifying what an employer should or should not do in order to ensure that, while avoiding liability to a penalty¹ and while avoiding the commission of an offence², he also avoids contravening the Race Relations Act 1976 or the Race Relations (Northern Ireland) Order 1997³. Before issuing the code the Secretary of State must (1) consult (a) the Commission for Equality and Human Rights, (b) the Equality Commission for Northern Ireland, (c) such bodies representing employers as he thinks appropriate, and (d) such bodies representing workers as he thinks appropriate, (2) publish a draft code (after that consultation), (3) consider any representations made about the published draft, and (4) lay a draft code before Parliament (after considering representations under head (3) above and with or without modifications to reflect the representations)⁴. The code comes into force in accordance with provision made by order of the Secretary of State; and an order (i) may include transitional provision, (ii) must be made by statutory instrument, and (iii) will be subject to annulment in pursuance of a resolution of either House of Parliament⁵. A breach of the code (A) does not make a person liable to civil or criminal proceedings, but (B) may be taken into account by a court or tribunal⁶. The Secretary of State must from time to time review the code and may revise and re-issue it following a review; and a reference in these provisions to the code includes a reference to the code as revised⁷.

1 le under the Immigration, Asylum and Nationality Act 2006 s 15: see PARA 200A.1.

2 le under ibid s 21: see PARA 200A.6.

3 Ibid s 23(1).

4 Ibid s 23(2).

5 Ibid s 23(3). For provision as to the commencement of the code so made see the Immigration (Restrictions on Employment) Order 2007, SI 2007/3290, art 12. As to orders generally see the 2006 Act s 20.

6 Ibid s 23(4).

7 Ibid s 23(5).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(i) Offences and Liabilities/201. Offences in connection with immigration control.

201. Offences in connection with immigration control.

A person is guilty of an offence punishable on summary conviction with a fine of not more than level 5 on the standard scale¹ or with imprisonment for not more than six months, or with both, in any of the following cases²: (1) if, without reasonable excuse, he refuses or fails to submit to an examination under the Immigration Act 1971³; (2) if, without reasonable excuse, he refuses or fails to furnish or produce any information in his possession, or any documents in his possession or control, which he is on an examination⁴ required to furnish or produce⁵; (3) if on any such examination or otherwise he makes or causes to be made to an immigration officer or

other person lawfully acting in the execution of a relevant enactment⁶ a return, statement or representation which he knows to be false or does not believe to be true⁷; (4) if, without lawful authority, he alters any certificate of entitlement⁸, entry clearance⁹, work permit¹⁰ or other document issued or made under or for the purposes of the Immigration Act 1971, or uses for the purposes of the Immigration Act 1971, or has in his possession for such use, any passport, certificate of entitlement, entry clearance, work permit, or other document which he knows or has reasonable cause to believe to be false¹¹; (5) if, without reasonable excuse, he fails to complete and produce a landing or embarkation card in accordance with any order under the Immigration Act 1971¹²; (6) if, without reasonable excuse, he fails to comply with any requirement to register with the police, or at an hotel or lodging house¹³; (7) if, without reasonable excuse, he obstructs an immigration officer or other person lawfully acting in the execution of the Immigration Act 1971¹⁴.

Where the offence is one to which an extended time limit for prosecutions applies¹⁵, an information relating to the offence may be tried by a magistrates' court if it is laid within six months of the commission of the offence, or if it is laid within three years of the commission of the offence and not more than two months after the date certified by an officer of police above the rank of chief superintendent to be the date on which evidence sufficient to justify proceedings came to the notice of an officer of the police force to which he belongs¹⁶.

For the purposes of the trial of a person for an offence under Part III of the Immigration Act 1971¹⁷, the offence is deemed to have been committed either at the place at which it actually was committed or at any place at which he might be¹⁸, and any powers exercisable under the Immigration Act 1971 may be exercised notwithstanding that proceedings for an offence under Part III of the Immigration Act 1971¹⁹ have been taken against him²⁰.

1 As to the standard scale see para 81 note 2 ante.

2 Immigration Act 1971 s 26(1) (amended by the Asylum and Immigration Act 1996 s 6; and by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). A person may not be convicted in respect of things done before the Immigration Act 1971 came into force: *Waddington v Miah* [1974] 2 All ER 377, [1974] 1 WLR 683, HL. See also criminal offences under the British Nationality Act 1981 s 46; and para 81 ante. As to the procedure for offences triable summarily see MAGISTRATES vol 29(2) (Reissue) para 681 et seq.

3 Immigration Act 1971 s 26(1)(a). The examination referred to in the text is an examination under s 4(2), Sch 2 (as amended): see para 143 ante. As to medical examination after entry see para 149 ante.

4 Ie on an examination under ibid Sch 2 (as amended). As to the power to require information, production of documents etc see para 144 ante.

5 Ibid s 26(1)(b).

6 'Relevant enactment' means the Immigration Act 1971, the Immigration Act 1988, the Asylum and Immigration Appeals Act 1993, or the Immigration and Asylum Act 1999 (apart from Pt VI (ss 94-127) (as amended)): Immigration Act 1971 s 26(3) (added by the Immigration and Asylum Act 1999 s 30(1), (3)). The persons who can make such an examination include a person prescribed by regulations under the Immigration Act 1971 s 4(3) (see para 97 ante), a medical inspector or a qualified person carrying out a test or examination required by a medical inspector (see Sch 2 para 2(2); and para 143 ante), a medical officer of health (see Sch 2 para 7 (as amended); and para 149 ante) or an entry clearance officer (*R v Secretary of State for the Home Department, ex p Kwadwo Saffu-Mensah* [1991] Imm AR 43), or persons exercising functions under the Immigration and Asylum Act 1999 such as detainee custody officers (see para 158 ante). It has been held that a person was not acting in the execution of the Immigration Act 1971 unless he was acting in the performance of a duty imposed by, or in the exercise of a power conferred by, the Immigration Act 1971: *R v Clarke* [1985] AC 1037, [1985] 2 All ER 777, HL (in the course of investigating another matter, police officer suspected accused was an illegal entrant or was illegally resident in the United Kingdom; false statement not an offence under the Immigration Act 1971 s 26(1)(c)).

7 Ibid s 26(1)(c) (amended by Immigration and Asylum Act 1999 s 30(1), (2)). It may be sufficient for the Secretary of State to show that the deception was material in the sense that it was likely to influence the decision whether to grant leave to enter, and not the more stringent test of proving that the deception was an effective means of obtaining leave to enter: *R v Secretary of State for the Home Department, ex p Castro* [1996] Imm AR 540.

Where deceptions are practised which constitute offences under the Immigration Act 1971 s 26(1)(c) (as amended) they do not necessarily make the person an illegal entrant: *R v Secretary of State for the Home Department, ex p Khan* [1990] 2 All ER 531, [1990] 1 WLR 798, [1990] Imm AR 327, CA.

The extended time limit for prosecutions which is provided for by the Immigration Act 1971 s 28 (as amended) (see the text and notes 15-18 infra) applies to offences under s 26(1)(c) (as amended) and s 26(1)(d) (as amended) (see the text to notes 8-11 infra): s 26(2).

8 For the meaning of 'certificate of entitlement' see para 85 note 13 ante.

9 As to entry clearance see para 96 ante.

10 For the meaning of 'work permit' see para 109 ante.

11 Immigration Act 1971 s 26(1)(d) (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 3(1)). See note 7 supra. A document must be false for the offence to be committed: see *R v Secretary of State for the Home Department, ex p Patel* [1986] Imm AR 208; affd [1986] Imm AR 515, CA.

As to the control of admission to the United Kingdom see para 84 et seq ante. As to defences, based on the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906), art 31(1), to offences and any attempt to commit an offence under the Immigration Act 1971 s 26(1)(d) (as amended) see para 205 post.

12 Ibid s 26(1)(e). The order referred to in the text is an order under Sch 2 para 5: see para 144 ante. As to the order made under Sch 2 para 5 see the Immigration (Landing and Embarkation Cards) Order 1975, SI 1975/65 (as amended). As to the obligation to complete and produce a landing or embarkation card see para 144 ante.

13 Immigration Act 1971 s 26(1)(f). As to registration with the police see para 97 ante. As to registration at hotels and hotel records see para 98 ante.

14 Ibid s 26(1)(g). As to offences of assaulting and obstructing a detainee custody officer see the Immigration and Asylum Act 1999 s 154(7), Sch 11 paras 4, 5; and para 158 ante.

15 Ie under the Immigration Act 1971 s 24 (as amended) (see para 197 ante), s 24A (as added) (see para 198 ante), s 25 (as amended) (see para 199 ante), or s 26 (as amended) (see para 201 ante).

16 Ibid s 28(1)(a) (amended by the Immigration Act 1988 s 10, Schedule para 4; and the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 53). As to proceedings in Scotland see the Immigration Act 1971 s 28(1)(b), (2); and as to proceedings in Northern Ireland see s 28(1)(c).

As to the operation of the extended time limit see *R v Clerk to Birmingham Justices, ex p Offei* (28 November 1995) Lexis, Enggen Library, Cases File. Evidence means more than mere information given over the telephone: *Enaas v Dovey* (1986) Times, 25 November, DC.

The fact that a defendant is charged and pleads not guilty before the date on which the certificate under the Immigration Act 1971 s 28(1) is signed does not render his trial a nullity: *Quazi v DPP* (1988) 152 JP 385, [1988] Crim LR 529.

17 Ie under the Immigration Act 1971 Pt III (ss 24-28L) (as amended).

18 Ibid s 28(3).

19 See note 17 supra.

20 Immigration Act 1971 s 28(4).

UPDATE

201 Offences in connection with immigration control

TEXT AND NOTES--A person commits an offence if he (1) makes a false registration card; (2) alters a registration card with intent to deceive or to enable another to deceive; (3) has a false or altered registration card in his possession without reasonable excuse; (4) uses or attempts to use a false registration card for a purpose for which a registration card is issued; (5) uses or attempts to use an altered registration card with intent to deceive; (6) makes an article designed to be used in making a false registration card;

(7) makes an article designed to be used in altering a registration card with intent to deceive or to enable another to deceive; or (8) has an article within heads (6), (7) in his possession without reasonable excuse: Immigration Act 1971 s 26A(3) (s 26A added by the Nationality, Immigration and Asylum Act 2002 s 148). For these purposes, a 'registration card' means a document which carries information about a person, whether or not wholly or partly electronically, and is issued by the Secretary of State to the person wholly or partly in connection with a claim for asylum, whether or not made by that person, or a claim for support under the Immigration and Asylum Act 1999 s 4, whether or not made by that person: 1971 Act s 26A(1) (s 26A(1) amended by SI 2008/1693). 'Claim for asylum' has the meaning given by the 2002 Act s 18: 1971 Act s 26A(2). For the purposes of s 26A(3), 'false registration card' means a document which is designed to appear to be a registration card: s 26A(4). A person who is guilty of an offence under heads (1), (2), (4)-(7) is liable, on conviction on indictment, to imprisonment for a term not exceeding ten years, to a fine or to both; or, on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both: s 26A(5). As to the statutory maximum see PARA 158 note 20. A person who is guilty of an offence under heads (3) or (8) is liable, on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both; or, on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both: s 26A(6). The Secretary of State may by order amend the definition of 'registration card' in s 26A(1) and make consequential amendment: s 26A(7). Such an order must be made by statutory instrument, and may not be made unless a draft has been laid before and approved by resolution of each House of Parliament: s 26A(8).

A person commits an offence if he has an immigration stamp, or a replica immigration stamp, in his possession without reasonable excuse: s 26B(1), (2) (s 26B added by the Nationality, Immigration and Asylum Act 2002 s 149). 'Immigration stamp' means a device which is designed for the purpose of stamping documents in the exercise of an immigration function; 'replica immigration stamp' means a device which is designed for the purpose of stamping a document so that it appears to have been stamped in the exercise of an immigration function; and 'immigration function' means a function of an immigration officer or the Secretary of State under the Immigration Acts: s 26B(3). For the meaning of 'Immigration Acts' see PARA 83. A person who is guilty of an offence under s 26B is liable, on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both; or, on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both: s 26B(4).

A person who assaults an immigration officer commits an offence: UK Borders Act 2007 s 22(1). A person guilty of an offence under s 22 is liable on summary conviction to (1) imprisonment for a period not exceeding 51 weeks, (2) a fine not exceeding level 5 on the standard scale (see PARA 81), or (3) both: s 22(2). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (51 week maximum term of sentences) the reference in head (1) to 51 weeks is to be treated as a reference to six months: 2007 Act s 22(5). An immigration officer may arrest a person without warrant if the officer reasonably suspects that the person has committed or is about to commit an offence under s 22: s 23(1). An offence under s 22 must be treated as (a) a relevant offence for the purposes of the Immigration Act 1971 ss 28B and 28D (search, entry and arrest), and (b) an offence under the 1971 Act Pt 3 (criminal proceedings) for the purposes of ss 28(4), 28E, 28G and 28H (search after arrest etc): 2007 Act s 23(2). The following provisions of the Immigration Act 1971 have effect in connection with an offence under the 2007 Act s 22 as they have effect in connection with an offence under the 1971 Act (i) s 28I (seized material: access and

copying), (ii) s 28J (search warrants: safeguards), (iii) s 28K (execution of warrants), and (iv) s 28L(1) (interpretation): 2007 Act s 23(3).

As to the offence of failing to take specified action to enable a travel document to be obtained for a person so that that person's removal or deportation is facilitated see PARA 165A.

NOTES--See the Nationality, Immigration and Asylum Act 2002 ss 129, 134, 136-139; and PARA 197.

NOTE 6--'Relevant enactment' now includes the Nationality, Immigration and Asylum Act 2002 (apart from Pt 5 (ss 81-117)): 1971 Act s 26(3) (amended by the 2002 Act s 151).

NOTE 15--References to the 1971 Act ss 24A, 25 omitted: s 28(1) (amended by the 2002 Act s 156(1)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(i) Offences and Liabilities/202. Offences by persons connected with ships or aircraft or with ports or the Channel Tunnel.

202. Offences by persons connected with ships or aircraft or with ports or the Channel Tunnel.

A person is guilty of an offence punishable on summary conviction with a fine of not more than level 5 on the standard scale¹ or with imprisonment for not more than six months, or with both, in any of the following cases².

He is guilty of an offence if, being the captain³ of a ship⁴ or aircraft⁵, or the train manager⁶ of a through or shuttle train⁷: (1) he knowingly permits a person to disembark⁸ or leave the train in the United Kingdom⁹ when required to prevent it¹⁰, or fails without reasonable excuse to take any steps he is required to take in connection with the disembarkation or examination of passengers¹¹ or for furnishing a passenger list or particulars of members of the crew¹²; or (2) he fails, without reasonable excuse, to comply with any directions given to him¹³ with respect to the removal of a person from the United Kingdom¹⁴.

He is guilty of an offence if, as owner or agent of a ship or aircraft, or as, or as an agent of, a person operating an international service¹⁵: (a) he arranges, or is knowingly concerned in any arrangements, for the ship or aircraft to call at a port other than a port of entry¹⁶ contrary to any provision of the Immigration Act 1971¹⁷ or for a through train to stop at a place other than a terminal control point or an international station¹⁸; or (b) he fails, without reasonable excuse, to take any steps required by an order¹⁹ for the supply to passengers of landing or embarkation cards²⁰; or (c) he fails, without reasonable excuse, to make arrangements for or in connection with the removal of a person from the United Kingdom when required to do so by directions given under Immigration Act 1971 or the Immigration and Asylum Act 1999²¹; or (d) he fails, without reasonable excuse, to comply with the requirements to provide passenger information and notification of non-EEA arrivals²².

He is guilty of an offence if as owner or agent of a ship or aircraft or a person concerned in the management of a port, or as, or as agent of, a person operating an international service, or as an occupier or person concerned with the management of a terminal control point or an international station, he fails, without reasonable excuse, to take any steps required by the Immigration Act 1971²³ in relation to the embarkation or disembarkation of passengers, or persons arriving or seeking to arrive in, or leaving or seeking to leave, the United Kingdom through the tunnel system, where a control area is designated²⁴.

- 1 As to the standard scale see para 81 note 2 ante.
- 2 Immigration Act 1971 s 27 (amended by the Asylum and Immigration Act 1996 s 6; and by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the procedure for offences triable summarily see MAGISTRATES vol 29(2) (Reissue) para 681 et seq.
- 3 For the meaning of 'captain' see para 87 note 1 ante.
- 4 As to the meaning of 'ship' see para 87 note 2 ante.
- 5 As to the meaning of 'aircraft' see para 87 note 3 ante. As to the liability of carriers for passengers without proper documents see para 204 et seq post.
- 6 For the meaning of 'train manager' see para 87 note 1 ante.
- 7 Immigration Act 1971 s 27(a) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(9)(a)(i); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7). For the meaning of 'through train' see para 87 note 4 ante; and For the meaning of 'shuttle train' see para 87 note 5 ante.
- 8 For the meaning of 'disembark' see para 93 note 1 ante.
- 9 As to the meaning of 'United Kingdom' see para 5 note 1 ante.
- 10 Ie under the Immigration Act 1971 s 4(2), Sch 2 (both as amended) or s 5(5), Sch 3 (as amended): see paras 152 et seq, 163 et seq ante.
- 11 As to the steps required to be taken in connection with the disembarkation or examination of passengers see ibid Sch 2 para 27; and para 145 ante.
- 12 Ibid s 27(a)(i) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(9)(a)(ii); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7). For the meaning of 'crew' see para 87 note 1 ante.
- 13 Ie under the Immigration Act 1971 Sch 2 (as amended), Sch 3 (as amended) or the Immigration and Asylum Act 1999: see paras 152 et seq, 163 et seq ante.
- 14 Immigration Act 1971 s 27(a)(ii) (amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 52(1), (2)).
- 15 Immigration Act 1971 s 27(b) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(9)(b)(i); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7). For the meaning of 'international service' see para 87 note 1 ante.
- 16 As to the ports of entry see para 145 note 5 ante.
- 17 Ie contrary to any provision of the Immigration Act 1971 Sch 2 (as amended).
- 18 Ibid s 27(b)(i) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(9)(b)(ii) (itself amended by SI 1994/1405); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7).
- 19 Ie required by an order under the Immigration Act 1971 Sch 2 para 5: see para 144 ante. As to the order made under Sch 2 para 5 see the Immigration (Landing and Embarkation Cards) Order 1975, SI 1975/65 (as amended).
- 20 Immigration Act 1971 s 27(b)(ii).
- 21 Ibid s 27(b)(iii) (amended by the Immigration and Asylum Act 1999 Sch 14 paras 43, 52(1), (3)). The text refers to directions given under the Immigration Act 1971 Sch 2 (as amended), Sch 3 (as amended) or under the Immigration and Asylum Act 1999: see paras 152 et seq, 163 et seq ante.
- 22 Immigration Act 1971 s 27(b)(iv) (added by the Immigration and Asylum Act 1999 Sch 14 paras 43, 52(1), (3)(b)). As to the duty to provide passenger information see the Immigration Act 1971 Sch 2 para 27B (as

added); and para 147 ante. As to the duty to provide notification of non-EEA arrivals see Sch 2 para 27C (as added); and para 147 ante.

23 le steps required by ibid Sch 2 (as amended).

24 Ibid s 27(c) (modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 4 para 1(9)(c) (itself amended by SI 1994/1405); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7). For the meaning of 'embark' see para 93 note 1 ante.

UPDATE

202 Offences by persons connected with ships or aircraft or with ports or the Channel Tunnel

TEXT AND NOTES 22, 24--1971 Act s 27(b)(iv), (c) amended: Immigration, Asylum and Nationality Act 2006 s 31(4), Sch 3.

NOTES--SI 2004/1405 art 7 amended: SI 2007/3579.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(i) Offences and Liabilities/203. Liability of carriers for clandestine entrants.

203. Liability of carriers for clandestine entrants.

A person is a clandestine entrant if he claims, or indicates that he intends to seek, asylum in the United Kingdom¹ or evades, or attempts to evade, immigration control² having:

- 556 (1) arrived in the United Kingdom concealed³ in a vehicle⁴, ship⁵, aircraft⁶ or rail freight wagon⁷;
- 557 (2) passed, or attempted to pass, through immigration control concealed in a vehicle⁸; or
- 558 (3) arrived in the United Kingdom on a ship or aircraft, having embarked concealed in a vehicle at a time when the ship or aircraft was outside the United Kingdom⁹.

The person or persons responsible for a clandestine entrant¹⁰ is (or are together) liable to a penalty of £2,000¹¹ in respect of the clandestine entrant, and an additional penalty of that amount in respect of each person who was concealed with the clandestine entrant in the same transporter¹² or rail freight wagon¹³. The responsible person is liable to the penalty regardless of whether he knew or suspected that the clandestine entrant was concealed in the transporter or rail freight wagon or that there were other persons concealed with the clandestine entrant in the transporter or rail freight wagon¹⁴, although it is a defence¹⁵ for the person liable to the penalty to show that he, or an employee of his who was directly responsible for allowing the clandestine entrant to be concealed, was acting under duress¹⁶, or that:

- 559 (a) he did not know, and had no reasonable grounds for suspecting, that a clandestine entrant was, or might be, concealed in the transporter or rail freight wagon or, knowing, or having reasonable grounds for suspecting, that a clandestine entrant was, or might be, concealed in the rail freight wagon in circumstances where the clandestine entrant had boarded the train or shuttle train after it had

commenced its journey to the United Kingdom, he was not able to stop the train or shuttle train without endangering safety¹⁷;

560 (b) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the transporter or train or shuttle train including that rail freight wagon¹⁸; and

561 (c) that on the occasion in question the person or persons responsible for operating that system did so properly¹⁹.

If the Secretary of State decides that a person is liable to one or more penalties in respect of clandestine entrants, he must notify that person of his decision by means of a penalty notice²⁰. A person on whom a penalty notice is served, or who is treated as having had such a notice served on him²¹, who alleges that he is not liable for one or more or all of the specified penalties, may serve on the Secretary of State a notice of objection²², and the Secretary of State, having considered the notice, must determine whether or not any penalty to which it relates is payable²³.

Where a penalty notice has been issued, a senior officer²⁴ may detain any relevant vehicle, small ship²⁵ or small aircraft²⁶, or the rail freight wagon in which the clandestine entrant arrived in the United Kingdom, as the case may be, until all penalties to which the notice relates, and any expenses reasonably incurred by the Secretary of State in connection with the detention, have been paid²⁷. Unless the Secretary of State was acting unreasonably in issuing the penalty notice, such detention is lawful even if it is subsequently established that the penalty notice on which the detention was based was ill-founded in respect of all or any of the penalties to which it related²⁸. Failing release of the transporter by the court²⁹, the Secretary of State may sell it if the penalty in question and connected expenses are not paid before the end of the period of 84 days beginning with the date on which the detention began³⁰.

The statutory regime outlined above has been found in its entirety to be incompatible with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) guaranteeing the right to a fair trial³¹. The imposition of fixed penalties, providing neither for the possibility of mitigation nor the determination of such penalties by an independent tribunal, has been found to be particularly unfair in this regard. The provisions of the regime relating to the seizure and sale of transporters have also been found to be incompatible, as disproportionate to the aims of the scheme, with the provisions of the Convention guaranteeing the peaceful enjoyment of a person's possessions³².

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 'Immigration control' means United Kingdom immigration control and includes any United Kingdom immigration control operated in a prescribed control zone outside the United Kingdom: Immigration and Asylum Act 1999 s 32(10); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). Coquelles in France, which is a control zone for the purposes of the International Articles and the Tripartite Articles is a prescribed control zone: Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, reg 5. For these purposes 'the International Articles' means the provisions set out in the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 2: art 2(3), Sch 1; Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, reg 5(2); and 'the Tripartite Articles' means the provisions set out in the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, Sch 2: art 2(3); Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, reg 5(2).

3 For the purposes of the Immigration and Asylum Act 1999 Pt II (ss 32-43), 'concealed' includes being concealed in any freight, stores or other thing carried in or on the vehicle, ship, aircraft or rail freight wagon (see notes 4-7 infra) concerned: s 43; Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1), (9)(a).

4 For the purposes of the Immigration and Asylum Act 1999 Pt II, 'vehicle' includes a trailer, semi-trailer, caravan or other thing which is designed or adapted to be towed by another vehicle: s 43.

5 For the purposes of ibid Pt II, 'ship' includes every description of vessel used in navigation: s 43.

6 For the purposes of *ibid* Pt II, 'aircraft' includes hovercraft: s 43.

7 *Ibid* ss 32(1)(a), 39; Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, reg 3. For the purposes of the Immigration and Asylum Act 1999 Pt II and the Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, 'rail freight wagon' means any rolling stock, other than a locomotive, which forms part of a train, or a freight shuttle wagon: Immigration and Asylum Act 1999 s 43; Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, reg 2 (substituted by SI 2001/3232). For these purposes 'locomotive' means any railway vehicle which has the capacity for self-propulsion (whether or not the power by which it operates is derived from a source external to the vehicle); 'railway vehicle' includes anything which, whether or not it is constructed or adapted to carry any person or load, is constructed or adapted to run on flanged wheels over or along track; 'rolling stock' means any carriage, wagon or other vehicle used on track and includes a locomotive; and 'track' means any land or other property comprising the permanent way of any railway, taken together with the ballast, sleepers and metals laid thereon, whether or not the land or other property is also used for other purposes, providing that any reference to track includes a reference to any level crossings, bridges, viaducts, tunnels, culverts, retaining walls, or other structures used or to be used for the support of, or otherwise in connection with, track, and any walls, fences or other structures bounding the railway or bounding any adjacent or adjoining property (Railways Act 1993 s 83(1); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, reg 1(3)); 'train' means any train other than a train engaged on a service for the carriage of passengers or a shuttle train (reg 1(3) (amended by SI 2001/3232)); and 'freight shuttle wagon' means a wagon which forms part of a shuttle train and is designed for the purpose of carrying heavy commercial goods vehicles (Immigration and Asylum Act 1999 s 43; Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 1(3), 4(9)(c) (reg 1(3) amended, reg 4(9)(c) added, by SI 2001/3232)). For the meaning of 'shuttle train' see para 87 note 5 ante; definition applied by the Immigration and Asylum Act 1999 s 43 and the Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 1(3), 4(9)(c) (reg 1(3) amended, reg 4(9)(c) added, by SI 2001/3232). As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

At the date at which this volume states the law the Immigration and Asylum Act 1999 ss 32-37, 39 had yet to be brought into force so far as relating to persons who are clandestine entrants by virtue of s 32(1)(a) who arrive in the United Kingdom concealed otherwise than in a vehicle.

8 *Ibid* s 32(1)(b).

9 *Ibid* s 32(1)(c).

10 The person or persons responsible for a clandestine entrant who has arrived in the United Kingdom concealed in a vehicle, ship, aircraft or rail freight wagon are: (1) if the transporter is a ship or aircraft, the owner or captain; (2) if the transporter is a vehicle (but not a detached trailer) the owner, hirer or driver of the vehicle; (3) if the transporter is a detached trailer, the owner, hirer or operator of the trailer; (4) if the clandestine entrant has arrived concealed in a train, the railway operator who, at the train's last scheduled stop before arrival in the United Kingdom, had the duty of certifying the train as fit to travel to the United Kingdom and any other railway operator who has entered into an arrangement with that operator under which they share profits or liabilities arising from that train's journey from the last scheduled stop into the United Kingdom; and (5) if the clandestine entrant has arrived concealed in a freight shuttle wagon, the operator of the shuttle train which includes that freight shuttle wagon: *ibid* s 32(5); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1), (3), (3A) (reg 4(3A) added by SI 2001/3232). The person or persons responsible for a clandestine entrant who has passed, or attempted to pass, through immigration control concealed in a vehicle or who has arrived on a ship or aircraft having embarked concealed in a vehicle at a time when the ship or aircraft was outside the United Kingdom are the owner, hirer or operator of the trailer, if the transporter is a detached trailer, or, if it is not, the owner, hirer or driver of the vehicle: Immigration and Asylum Act 1999 s 32(6).

For the purposes of Pt II, 'transporter' means a vehicle, ship or aircraft together with its equipment and any stores for use in connection with its operation; 'owner' includes, where applicable, the agent or operator of the ship or aircraft, the operator of the road passenger vehicle, and, in relation to a transporter which is the subject of a hire-purchase agreement, the person in possession of it under that agreement; 'captain' means the master of a ship or commander of an aircraft; 'detached trailer' means a trailer, semi-trailer, caravan or any other thing which is designed or adapted for towing by a vehicle but which has been detached for transport in or on the vehicle concerned or in the ship or aircraft concerned (whether separately or in or on a vehicle); 'hirer', in relation to a vehicle, means any person who has hired the vehicle from another person; and 'equipment', in relation to an aircraft, includes any certificate of registration, maintenance or airworthiness of the aircraft, any log book relating to the use of the aircraft, and any similar document: s 43. 'Train' means a train which is engaged on an international service as defined by the Channel Tunnel Act 1987 s 13(6) (see para 87 note 1 ante) but is not a shuttle train as defined by s 1(9) (see para 87 note 5 ante), except in the case of a clandestine entrant who has arrived concealed in a rail freight wagon, where the definition of 'train' set out in

note 7 *supra* applies: Immigration and Asylum Act 1999 s 43; Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1), (9)(b).

11 The amount prescribed by regulations by virtue of the Immigration and Asylum Act 1999 s 32(2)(a); Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, regs 2A(1), (2), 3, Schedule para 1 (reg 2A, Schedule added by SI 2001/311). As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 *ante*.

12 If a person arrives concealed in a 'carried transporter' (ie a transporter which is itself being carried in or on another transporter), neither transporter being a rail freight wagon, the question whether any other person is concealed with that person in the same transporter is to be determined by reference to the carried transporter and not by reference to the transporter in or on which it is carried: *ibid* s 32(8), (9).

13 *Ibid* s 32(2); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1), (2). Any such penalty must be paid to the Secretary of State before the end of the period prescribed by regulations made by the Secretary of State (Immigration and Asylum Act 1999 s 32(3); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1)). The period so prescribed is 60 days from the date the responsible person was served with the penalty notice (see the Immigration and Asylum Act 1999 s 35(2); and the text and note 20 *infra*) in respect of the penalty concerned or, if there is more than one responsible person, 60 days from the date the first such person was so served: Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, regs 2A(1), (2), 4(1), Schedule para 1 (reg 2A, Schedule as added: see note 11 *supra*). In calculating the 60-day period, no account is to be taken of any period during which the Secretary of State is in receipt of a notice of objection in connection with the penalty but has not notified the person giving it of his determination in respect of the penalty: reg 4(2). Payment of the full amount of a penalty by one or more of the persons responsible for the clandestine entrant discharges the liability of each of the persons responsible for that entrant: Immigration and Asylum Act 1999 s 32(4); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). Any sum payable to the Secretary of State as a penalty may be recovered by the Secretary of State as a debt due to him: Immigration and Asylum Act 1999 s 35(10); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). As to the Secretary of State see para 2 *ante*.

The penalty regime under the Immigration and Asylum Act 1999 s 32 has been held to be incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969): see the text and notes 31-32 *infra*.

14 Immigration and Asylum Act 1999 s 32(7); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1), (4). This is however subject to the defence provided by the Immigration and Asylum Act 1999 s 34 (see the text and notes 15-19 *infra*).

15 As to the defences set out in *ibid* s 34(2), (3) (see the text and notes 16-19 *infra*) see *R (on the application of Balbo B & C Auto Transporti Internazionali) v Secretary of State for the Home Department* [2001] EWHC 195 (Admin), [2001] 4 All ER 423, [2001] 1 WLR 1556, DC (person disputing liability should wait to be sued and raise a defence in the county court, rather than apply for judicial review of the penalty notice). The reversal of the legal burden of proof has been held incompatible with the European Convention on Human Rights: see note 13 *supra*.

16 Immigration and Asylum Act 1999 s 34(1), (2); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). See note 14 *supra*.

If a person responsible for the clandestine entrant has a defence under the Immigration and Asylum Act 1999 s 34(2), the liability of any other person responsible for that entrant is discharged: s 34(6)

17 *Ibid* s 34(1), (3)(a); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1), (6)(a) (reg 4(6) substituted by SI 2001/3232). If there are two or more persons responsible for a clandestine entrant, the fact that one or more of them has a defence under the Immigration and Asylum Act 1999 s 34(3) does not affect the liability of the others: s 34(5). See note 14 *supra*.

18 Immigration and Asylum Act 1999 s 34(1), (3)(b); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1), (6)(b) (reg 4(6) as substituted: see note 17 *supra*). See notes 14, 17 *supra*.

In determining for these purposes whether a particular system is effective, regard is to be had to the codes of practice to be followed by persons operating systems for preventing the carriage of clandestine entrants, issued by the Secretary of State under the Immigration and Asylum Act 1999 s 33(1); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1): see the Immigration and Asylum Act 1999 s 34(4). The codes of practice currently in force are *Immigration and Asylum Act 1999: Civil Penalty: Code of Practice for Vehicles* (brought into operation on 3 April 2000 by the Carriers' Liability (Clandestine Entrants) (Code of Practice) Order 2000, SI 2000/684); *Civil Penalty: Code of Practice for Rail*

Freight Wagons (brought into operation on 1 March 2001 by the Carriers' Liability (Clandestine Entrants) (Code of Practice for Rail Freight) Order 2001, SI 2001/312); and *Civil Penalty: Code of Practice for Channel Tunnel Freight Shuttle Wagons* (brought into operation on 1 October 2001 by the Carriers' Liability (Clandestine Entrants) (Code of Practice for Freight Shuttle Wagons) Order 2001, SI 2001/3233). Before issuing codes of practice under the Immigration and Asylum Act 1999 s 33, the Secretary of State is required to consult such persons as he considers appropriate and lay a draft before both Houses of Parliament, following which he may bring the codes into operation by order: s 33(2)-(4); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1), (5). The Secretary of State may from time to time revise the whole or any part of the code and, following the same procedures, issue the code as revised: Immigration and Asylum Act 1999 s 33(5), (6); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante.

19 Ibid s 34(1), (3)(c); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). See notes 14, 17 supra.

20 Immigration and Asylum Act 1999 s 35(1); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). The notice must state the Secretary of State's reasons for imposing the penalty or penalties and the amount of the penalty or penalties, must specify the date before which, and the manner in which, the penalty or penalties must be paid, and must include an explanation of the steps that the person must take if he objects to the penalty (see the text and notes 21-23 infra) and the Secretary of State may take to recover any unpaid penalty: Immigration and Asylum Act 1999 s 35(2); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). Where a penalty notice is served on one of a number of persons who are liable for a clandestine entrant, the Secretary of State is taken to have served the required penalty notice on each of them (s 35(3), (4)), although the Secretary of State is nevertheless required to take reasonable steps, while a penalty remains unpaid, to secure that the penalty notice is actually served on each of the responsible persons (s 35(5)).

In relation to detached trailers, the Secretary of State may by regulations provide for a penalty notice which is served in such manner as may be prescribed to have effect as a penalty notice properly served on the responsible person or persons concerned under s 35, and in pursuance of this power the Secretary of State has provided that a penalty notice served by affixing it to a conspicuous part of the trailer has effect in this way: s 35(9); Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, reg 7.

21 Ie under the Immigration and Asylum Act 1999 s 35(3), (4): see note 20 supra. A person who is treated as having had a penalty notice served on him owing to the arrival of a clandestine entrant concealed in a rail freight wagon cannot issue a notice of objection: see the Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1), (7).

22 Immigration and Asylum Act 1999 s 35(6); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). The notice must give reasons for the allegation and must be given before the end of 30 days (as prescribed) from the date the responsible person was served with the penalty notice in respect of the penalty concerned or, if there is more than one responsible person, 30 days from the date the first such person was served: s 35(7); Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, regs 2A(1), (2), 6, Schedule para 1 (reg 2A, Schedule as added: see note 11 supra); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1).

23 Immigration and Asylum Act 1999 s 35(8); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). In order to be considered by the Secretary of State the notice of objection must be given before the end of the period set out in note 22 supra: Immigration and Asylum Act 1999 s 35(8); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1).

24 'Senior officer' means an immigration officer not below the rank of chief immigration officer: Immigration and Asylum Act 1999 s 43; Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1).

25 'Small ship' means a ship which has a gross tonnage of less than 500 tonnes: Immigration and Asylum Act 1999 s 43.

26 'Small aircraft' means an aircraft which has an operating weight of less than 5,700 kg: ibid s 43.

27 Ibid s 36(1); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1), (8). The power of detention may be exercised only if, in the opinion of the senior officer concerned, there is a significant risk that the penalty (or one or more of the penalties) will not be paid before the end of the period prescribed for the purposes of s 32(3) (ie the period within which a penalty imposed under s 32 must be paid) (as to which see note 13 supra) if the transporter is not detained, and may not be exercised if alternative security which the Secretary of State considers is satisfactory, has been given: s 36(2); Carriers'

Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1); Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, regs 2A(1), (2), 4, Schedule para 1 (reg 2A, Schedule as added: see note 11 supra).

If a transporter is so detained, the owner, consignor or any other person who has an interest in any freight or other thing carried in or on the transporter may remove it, or arrange for it to be removed, at such time and in such way as is reasonable: Immigration and Asylum Act 1999 s 36(3); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1).

28 Immigration and Asylum Act 1999 s 36(4), (5); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). The provisions enabling the seizure and retention of transporters have been held to be incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms: see the text and notes 31-32 infra.

29 'Court' means the county court or the High Court in England and Wales or, as the case may be, Northern Ireland: Immigration and Asylum Act 1999 s 43; Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). Where a transporter has been detained, the person to whom the penalty notice was addressed, or the owner or any other person claiming an interest in the transporter, may apply to the court for the transporter to be released, and the court may release the transporter if it considers that satisfactory security has been tendered in place of the transporter for the payment of the penalty alleged to be due and connected expenses, that there is no significant risk that the penalty (or one or more of the penalties) and any connected expenses will not be paid, or that there is a significant doubt as to whether the penalty is payable and the applicant has a compelling need to have the transporter released: Immigration and Asylum Act 1999 s 37(1)-(3); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). 'Connected expenses' means expenses reasonably incurred by the Secretary of State in connection with the detention: Immigration and Asylum Act 1999 s 37(5); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1).

30 Immigration and Asylum Act 1999 s 37(4); Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). The sale of a transporter requires the leave of the court, and the court may not give its leave except on proof that the penalty or charge is or was due, that the person liable to pay it or any connected expenses has failed to do so, and that the transporter which the Secretary of State seeks leave to sell is liable to sale: Immigration and Asylum Act 1999 s 37(6), Sch 1 para 1; Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). At least 21 days before applying to the court for leave to sell a transporter, the Secretary of State must, for the purpose of bringing the proposed application to the notice of persons whose interests may be affected by a decision of the court to give leave and for affording to any such person an opportunity of becoming a party to the proceedings if the Secretary of State applies for leave, publish in the London, Edinburgh or Belfast Gazette (depending on where the transporter is detained), and in one or more local newspapers circulating in the locality in which the transporter is detained, and, unless it is impracticable to do so, serve on any person to whom any relevant penalty notice was addressed, a notice: (1) stating the country of registration and registration number of the transporter (where reasonably possible); (2) stating the type of transporter and any distinguishing features or markings that may serve to identify it; (3) stating that, on a date specified in the notice, the transporter was detained under the Immigration and Asylum Act 1999 s 36 as security for the payment of one or more penalties due under s 32 and that unless payment of the sum due and any connected expenses is made within 21 days of the date of publication or (as the case may be) service of the notice, the Secretary of State may, without further notice, apply to the court for leave under Sch 1 to sell the transporter; and (4) inviting any person who considers his interests may be affected by any sale of the transporter (where the notice is published in a Gazette or newspaper), or the person on whom the notice is served, to inform the Secretary of State in writing within 21 days of the date of publication or (as the case may be) service of the notice if he wishes to become a party to the proceedings on the application: Immigration and Asylum Act 1999 Sch 1 para 2; Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1); Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, regs 2A(1), (2), 8(1)(a), (b)(i), 9(1)(a), (b), (c)(i), (d), Schedule para 1 (reg 2A, Schedule as added: see note 11 supra). For these purposes 'relevant penalty notice' means a penalty notice on the authority of which the transporter concerned is, under the Immigration and Asylum Act 1999 s 36(1), detained, together with any other penalty notice actually served in respect of the same carriage of clandestine entrants: Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, regs 2A(1), (2), 8(2)(a), Schedule para 1 (reg 2A, Schedule as so added). A notice may be served on a person under reg 8(1)(b) by delivering it to that person, leaving it at his proper address, sending it to his proper address by first class post in a prepaid registered envelope or by the recorded delivery service, facsimile, sent to his usual or last known business facsimile number, or by electronic mail, sent to his usual or last known business electronic mail address: regs 2A(1), (2), 9(2), Schedule para 1 (reg 2A, Schedule as so added). Any notice required to be served on any body corporate or unincorporated association under reg 8(1)(b) may be served on the secretary or clerk or other similar officer of that body, except in the case of a partnership, where it may be served on a partner or a person having control or management of the partnership business: regs 2A(1), (2), 9(3), (4), Schedule para 1 (reg 2A, Schedule as so added). For these purposes the proper address of any person on whom or to whom any such notice is to be served is his last known place of business or abode, except that such address must be the

address of the registered office or principal office of the body corporate (in the case of a body corporate or its secretary or clerk), the address of the principal office of the association (in the case of an unincorporated association (other than a partnership) or its secretary or clerk), or the address of the principal office of the partnership (in the case of a partnership or a partner or person having control or management of the partnership business), and for these purposes the principal office of a company registered outside the United Kingdom, or of an unincorporated association or partnership carrying on business outside the United Kingdom, is, if it has an office within the United Kingdom, its sole or principal office there: regs 2A(1), (2), 9(5), Schedule para 1 (reg 2A, Schedule as so added). Any notice which is sent by post in accordance with these provisions to a place outside the United Kingdom must be sent by airmail or by some other equally expeditious means: regs 2A(1), (2), 9(6), Schedule para 1 (reg 2A, Schedule as so added). For these purposes, where a notice is sent by first class post in a prepaid registered envelope or by the recorded delivery service, addressed to the person to whom the notice is required to be served, it is to be taken to have been received by (and served on) that person on the second day after the day on which it was sent; where a notice is sent by facsimile, to the last known business facsimile number of the person to whom notice is required to be served, it is to be taken to have been received by (and served on) that person on the day on which it was sent; where a notice is sent by electronic mail, to the last known business electronic mail address of the person to whom notice is required to be served, it is taken to have been received by (and served on) that person on the day on which it was sent; and where a notice is sent in accordance with reg 9(6), addressed to the person to whom notice is required to be served, it is to be taken to have been received by (and served on) that person on the second day after the day on which it was sent: regs 2A(1), (2), 11, Schedule para 1 (reg 2A, Schedule as so added). Failure to comply with any of the requirements for notifying a proposed sale is actionable against the Secretary of State at the suit of any person suffering loss in consequence of the sale, but does not affect the validity of a sale after it has taken place: Immigration and Asylum Act 1999 Sch 1 para 4; Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1).

If leave for sale is given, the Secretary of State must secure that the transporter is sold for the best price that can reasonably be obtained: Immigration and Asylum Act 1999 Sch 1 para 3; Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1). Failure to comply with this requirement is actionable against the Secretary of State at the suit of any person suffering loss in consequence of the sale, but does not affect the validity of a sale after it has taken place: Immigration and Asylum Act 1999 Sch 1 para 4; Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1).

The proceeds of any sale under the Immigration and Asylum Act 1999 s 37 must be applied (in order of priority): (a) in payment of any expenses reasonably incurred by the Secretary of State in connection with the detention and sale of the transporter, including the Secretary of State's expenses in connection with the application to court; (b) in payment of the penalties or (as the case may be) charges which the court has found to be due; (c) in payment of any duty (whether of customs or excise) chargeable on imported goods or value added tax which is due in consequence of the transporter having been brought into the United Kingdom; (d) where the transporter is an aircraft, in payment of any charge in respect of the aircraft which is due by virtue of regulations under the Civil Aviation Act 1982 s 73 (as amended); and (e) any surplus must be paid to or among the person or persons whose interests in the transporter have, to the knowledge of the Secretary of State, been divested by reason of the sale: Immigration and Asylum Act 1999 Sch 1 para 5; Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280, regs 3, 4(1); Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, regs 2A(1), (2), 10, Schedule para 1 (reg 2A, Schedule as so added).

As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

31 Ie the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 6: see *International Transport Roth GmbH v Secretary of State for the Home Department* [2002] EWCA Civ 158. As to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 6 see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 134 et seq.

32 Ie the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), First Protocol (Paris, 20 March 1952; TS 46 (1954); Cmd 9221) art 1: see *International Transport Roth GmbH v Secretary of State for the Home Department* [2002] EWCA Civ 158. As to the First Protocol see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 165.

UPDATE

203 Liability of carriers for clandestine entrants

TEXT AND NOTES--The Carriers Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, SI 2001/280 lapsed on the repeal of the enabling authority by the Nationality, Immigration and Asylum Act 2002 s 161, Sch 9. Provision relating to the

liability of carriers in respect of clandestine entrants who arrive concealed in a rail freight wagon is now contained in the 1999 Act ss 32-37, 43 as amended.

NOTES--1999 Act s 43 amended and renumbered s 43(1): Nationality, Immigration and Asylum Act 2002 s 125, Sch 8 para 15. SI 2000/685 replaced: Carriers' Liability Regulations 2002, SI 2002/2817 (amended by SI 2004/244).

NOTE 7--1999 Act s 39 repealed: Nationality, Immigration and Asylum Act 2002 Sch 9. Provision relating to arrival by concealment in a rail freight wagon is now made by the 1999 Act s 32(1)(aa) (added by the 2002 Act Sch 8 para 2(2) (Sch 8 paras 1-12, 16 in force for the purposes of clandestine entrants who arrive concealed in a vehicle or a rail freight wagon: see SI 2002/2811)). In the definition of 'freight shuttle wagon' for 'heavy commercial goods vehicles' read 'commercial goods vehicles': 1999 Act s 43(1) (as amended and renumbered: see NOTES).

1999 Act ss 32, 34-37 in force on 8 December 2002 so far as relating to persons who are clandestine entrants by virtue of s 32(1) who arrive in the United Kingdom concealed in a rail freight wagon: SI 2002/2815. The 1999 Act s 33 came into force on 6 December 1999: SI 1999/3190.

TEXT AND NOTES 10-13--1999 Act s 32(2) substituted, s 32(2A) added: Nationality, Immigration and Asylum Act 2002 Sch 8 para 2(3) (as to commencement see NOTE 7). The Secretary of State may require a person who is responsible for a clandestine entrant to pay (1) a penalty in respect of the clandestine entrant; (2) a penalty in respect of any person who was concealed with the clandestine entrant in the same transporter: 1999 Act s 32(2) (as so substituted). In imposing a penalty under s 32(2), the Secretary of State (a) must specify an amount which does not exceed the maximum prescribed for these purposes; (b) may, in respect of a clandestine entrant or a concealed person, impose separate penalties on more than one of the persons responsible for the clandestine entrant; and (c) may not impose penalties in respect of a clandestine entrant or a concealed person which amount in aggregate to more than the maximum prescribed for these purposes: s 32(2A). The amount prescribed for the purposes of head (a) is £2,000; and for the purposes of head (c) £4,000: see the Carriers' Liability Regulations 2002, SI 2002/2817, reg 3.

The Secretary of State must issue a code of practice specifying matters to be considered in determining the amount of a penalty under s 32, and must have regard to the code, in addition to any other matters he thinks relevant, when imposing a penalty under s 32, and when considering a notice of objection under s 35(4) (see TEXT AND NOTES 21, 22): s 32A(1), (2) (s 32A added by the 2002 Act Sch 8 para 3 (as to commencement see NOTE 7)). Before issuing the code the Secretary of State must lay a draft before Parliament: s 32A(3). After laying the draft code before Parliament the Secretary of State may bring the code into operation by order: s 32A(4). The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised, and s 32A(3), (4) also apply to such a revision or proposed revision: s 32A(5), (6). The current code came into effect on 1 March 2004: see the Carriers' Liability (Clandestine Entrants) (Level of Penalty: Revised Code of Practice) Order 2004, SI 2004/251.

NOTE 10--In head (1) for 'owner or captain' read 'owner and captain'; in head (2) for 'hirer or driver' read 'hirer and driver'; and in head (3) for 'hirer or operator' read 'hirer and operator': 1999 Act s 32(5) (s 32(5) amended by the Nationality, Immigration and Asylum Act 2002 Sch 8 para 2(5) (as to commencement of Sch 8 para 2 see NOTE 7)). Heads (4), (5) now head (4) as follows: (4) in the case of a clandestine entrant to whom the 1999 Act s 32(1)(aa) (see NOTE 7) applies, the responsible person is (a) where the entrant arrived concealed in a freight train, the train operator who, at the train's last scheduled stop before arrival in the United Kingdom, was responsible for certifying it as

fit to travel to the United Kingdom; and (b) where the entrant arrived concealed in a freight shuttle wagon, the operator of the shuttle-train of which the wagon formed part: 1999 Act s 32(5A) (added by the 2002 Act Sch 8 para 2(6)). 'Freight train' means any train other than a train engaged on a service for the carriage of passengers, or a shuttle train: 1999 Act s 43(1) (as renumbered and amended: see NOTES). In s 32(6) (amended by the 2002 Act Sch 8 para 2(7)), for 'hirer or operator' read 'hirer and operator'. Where a person falls within the definition of responsible person in more than one capacity, a separate penalty may be imposed on him under s 32(2) (as substituted: see TEXT AND NOTES 10-13) in respect of each capacity: s 32(6A) (added by the 2002 Act Sch 8 para 2(8)).

In the definition of 'owner' omit reference to the operator of the road passenger vehicle: 1999 Act s 43(1) (as amended and renumbered).

NOTE 13--1999 Act s 32(4) substituted, s 32(4A) added: Nationality, Immigration and Asylum Act 2002 Sch 8 para 2(4) (as to commencement see NOTE 7). Where a penalty is imposed under s 32(2) (as substituted: see TEXT AND NOTES 10-13) on the driver of a vehicle who is an employee of the vehicle's owner or hirer, the employee and the employer are jointly and severally liable for the penalty imposed on the driver, irrespective of whether a penalty is also imposed on the employer, and a provision about notification, objection or appeal has effect as if the penalty imposed on the driver were also imposed on the employer, irrespective of whether a penalty is also imposed on the employer in his capacity as the owner or hirer of the vehicle: s 32(4) (as so substituted). In the case of a detached trailer, s 32(4) has effect as if a reference to the driver were a reference to the operator: s 32(4A).

In proceedings for enforcement of a penalty under the 1999 Act s 35(10), no question may be raised as to liability to the imposition of the penalty, or its amount: s 35(11) (s 35(11)-(13) added by the 2002 Act Sch 8 para 7(5) (as to commencement see NOTE 7)). As to methods of service of a document which is to be issued to or served on a person outside the United Kingdom in the course of proceedings under s 35(10) see s 35(12) (as added); and TEXT AND NOTES 20-23.

A person may now appeal to the court against a penalty imposed on him under s 32 on the ground that he is not liable to the imposition of a penalty, or the amount of the penalty is too high: s 35A(1) (s 35A added by the 2002 Act Sch 8 para 8 (as to commencement see NOTE 7)). On such an appeal the court may allow the appeal and cancel the penalty, allow the appeal and reduce the penalty, or dismiss the appeal: 1999 Act s 35A(2) (s 35A as added). An appeal under this provision is a re-hearing of the Secretary of State's decision to impose a penalty and must be determined having regard to (1) any code of practice under s 32A (see TEXT AND NOTES 10-13) which has effect at the time of the appeal; (2) the code of practice under s 33 (see NOTE 18) which had effect at the time of the events to which the penalty relates; and (3) any other matters which the court thinks relevant, which may include matters of which the Secretary of State was unaware: s 35A(3). Section 35A(3) has effect despite any provision of the CPR: s 35A(4). An appeal may be brought by a person against a penalty whether or not he has given notice of objection under s 35(4) (as substituted: see TEXT AND NOTES 20-23), and whether or not the penalty has been increased or reduced under s 35(6) (as substituted: see TEXT AND NOTES 20-23): s 35A(5). For the meaning of 'the court' for these purposes see NOTE 29.

TEXT AND NOTES 16-19--1999 Act s 34(1) substituted: Nationality, Immigration and Asylum Act 2002 Sch 8 para 6(2) (as to commencement see NOTE 7).

NOTE 16--1999 Act s 34(6) substituted: Nationality, Immigration and Asylum Act 2002 Sch 8 para 6(6) (as to commencement see NOTE 7). Where a person has a defence under the 1999 Act s 34(2) in respect of a clandestine entrant, every other responsible

person in respect of the clandestine entrant is also entitled to the benefit of the defence: s 34(6) (as so substituted).

NOTE 17--1999 Act s 34(5) repealed: Nationality, Immigration and Asylum Act 2002 Sch 8 para 6(5) (as to commencement see NOTE 7).

NOTE 18--A draft of the code of practice under the 1999 Act s 33 must now be laid before Parliament (reference to both Houses omitted): s 33(2) (amended by the 2002 Act Sch 8 para 5) (as to commencement see NOTE 7). The Immigration and Asylum Act 1999: Civil Penalty: Code of Practice for Vehicles was replaced by the Immigration and Asylum Act 1999: Prevention of Clandestine Entrants: Revised Code of Practice for Vehicles (brought into operation on 1 March 2004 by the Carriers' Liability (Clandestine Entrants) (Revised Code of Practice for Vehicles) Order 2004, SI 2004/250).

TEXT AND NOTE 19--In head (c) for 'that on the occasion' read 'on the occasion': 1999 Act s 34(3)(c) (amended by the Nationality, Immigration and Asylum Act 2002 Sch 8 para 6(3) (as to commencement see NOTE 7)). It is also a defence for the carrier to show that (1) he knew or suspected that a clandestine entrant was or might be concealed in a rail freight wagon, having boarded after the wagon began its journey to the United Kingdom; (2) he could not stop the train or shuttle-train of which the wagon formed part without endangering safety; (3) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the train or shuttle-train; and (4) on the occasion in question the person or persons responsible for operating the system did so properly: 1999 Act s 34(3A) (added by the 2002 Act Sch 8 para 6(4)).

TEXT AND NOTES 20-23--1999 Act s 35(3)-(8) now s 35(3)-(7), substituted by the Nationality, Immigration and Asylum Act 2002 Sch 8 para 7(3) (as to commencement see NOTE 7). Where a person to whom a penalty notice is issued objects on the ground that he is not liable to the imposition of a penalty, or the amount of the penalty is too high, the person may give a notice of objection to the Secretary of State: 1999 Act s 35(3), (4) (as so substituted). A notice of objection must be in writing, give the objector's reasons, and be given before the end of such period as may be prescribed: s 35(5) (as so substituted). The period so prescribed is 28 days from the date the person was issued with the penalty notice: Carriers' Liability Regulations 2002, SI 2002/2817, reg 6. Where the Secretary of State receives a notice of objection to a penalty in accordance with this provision, he must consider it and (1) cancel the penalty; (2) reduce the penalty; (3) increase the penalty; or (4) determine to take no action under heads (1) to (3): s 35(6) (as so substituted). Where the Secretary of State considers a notice of objection under s 35(6) he must (a) inform the objector of his decision before the end of such period as may be prescribed or such longer period as he may agree with the objector; (b) if he increases the penalty, issue a new penalty notice under s 35(1); and (c) if he reduces the penalty, notify the objector of the reduced amount: s 35(7) (as so substituted). The period prescribed for the purposes of head (a) is 70 days from the date the objector was issued with the penalty notice: SI 2002/2817 reg 7.

A document which is to be issued to or served on a person outside the United Kingdom for the purpose of s 35(1), (7) (or in the course of proceedings under s 35(10) (see NOTE 13)) may be issued or served in person, by post, by facsimile transmission, or in another prescribed manner: s 35(12) (as added: see NOTE 13). The Secretary of State may by regulations provide that a document issued or served in a manner listed in s 35(12) in accordance with the regulations is to be taken to have been received at a time specified by or determined in accordance with the regulations: s 35(13) (as added: see NOTE 13).

NOTE 20--In the 1999 Act s 35(2) (amended by the Nationality, Immigration and Asylum Act 2002 Sch 8 para 7(2) (as to commencement of Sch 8 para 7 see NOTE 7)) for 'the steps that the person must take' read 'the steps that the person may take'. In the 1999

Act s 35(9) (amended by the 2002 Act Sch 8 para 7(4)) for 'served in' read 'issued in'; and for 'served on' read 'issued to'.

NOTE 27--1999 Act s 36(1) amended: Nationality, Immigration and Asylum Act 2002 Sch 8 para 9(1), (2) (as to commencement see NOTE 7). A vehicle may be detained under s 36(1) only if (1) the driver of the vehicle is an employee of its owner or hirer; (2) the driver of the vehicle is its owner or hirer; or (3) a penalty notice is issued to the owner or hirer of the vehicle: 1999 Act s 36(2A) (s 36(2A)-(2C) added by the 2002 Act Sch 8 para 9(3) (as to commencement see NOTE 7)). A senior officer may detain a relevant vehicle, small ship, small aircraft or rail freight wagon pending (a) a decision whether to issue a penalty notice; (b) the issue of a penalty notice; or (c) a decision whether to detain under the 1999 Act s 36(1): s 36(2B). That power may not be exercised in any case for longer than is necessary in the circumstances of the case, or after the expiry of the period of 24 hours beginning with the conclusion of the first search of the vehicle, ship, aircraft or wagon by an immigration officer after it arrived in the United Kingdom: s 36(2C).

TEXT AND NOTE 28--Where a person to whom a penalty notice has been issued under the 1999 Act s 35 fails to pay the penalty before the date specified in accordance with s 35(2) (see NOTE 20) the Secretary of State may make arrangements for the detention of any vehicle, small ship, small aircraft or rail freight wagon which the person to whom the penalty notice was issued uses in the course of a business: s 36A(1), (2) (s 36A added by the 2002 Act Sch 8 para 10 (as to commencement see NOTE 7)). A vehicle, ship, aircraft or wagon may be detained under s 36A(2) whether or not the person to whom the penalty notice was issued owns it, but a vehicle may be so detained only if the person to whom the penalty notice was issued is the owner or hirer of the vehicle, or was an employee of the owner or hirer of the vehicle when the penalty notice was issued: s 36A(3), (4). The power under s 36A(2) may not be exercised while an appeal against the penalty under s 35A (see NOTE 13) is pending or could be brought (ignoring the possibility of an appeal out of time with permission): s 36A(5). The Secretary of State must arrange for the release of a vehicle, ship, aircraft or wagon so if the person to whom the penalty notice was issued pays the penalty, and expenses reasonably incurred in connection with the detention: s 36A(6).

NOTE 29--Now, a reference to the 'court' is a reference, in England and Wales, to a county court, but a county court may transfer the proceedings to a High Court: 1999 Act s 43(2), (3) (both added by the Nationality, Immigration and Asylum Act 2002 Sch 8 para 15(h)). After 'has been detained' read 'under the 1999 Act s 36(1)'; for 'claiming an interest in the transporter' read 'whose interests may be affected by detention of the transporter'; omit words 'and the applicant has a compelling need to have the transporter released': s 37(1)-(3) (amended by the 2002 Act Sch 8 para 11(1)-(4) (as to commencement of Sch 8 para 11 see NOTE 7)). The court may also release the transporter on the application of the owner of the transporter under s 37(2) if a penalty notice was not issued to the owner or an employee of his, and the court considers it right to release the transporter: 1999 Act s 37(3A) (s 37(3A), (3B) added by the 2002 Act Sch 8 para 11(5)). In determining whether to release a transporter under s 37(3A) the court must consider (1) the extent of any hardship caused by detention; (2) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued; and (3) any other matter which appears to the court to be relevant, whether specific to the circumstances of the case or of a general nature: s 37(3B) (as added).

NOTE 30--The power of sale under s 37(4) may be exercised only when no appeal against the imposition of the penalty is pending or can be brought (ignoring the possibility of an appeal out of time with permission), and lapses if not exercised within a prescribed period: s 37(5A), (5B) (both added by the Nationality, Immigration and

Asylum Act 2002 Sch 8 para 11(6) (as to commencement of Sch 8 para 11 see NOTE 7)). The period so prescribed is 60 days after the date on which the power of sale could have first been exercised under the 1999 Act s 37(4), and in calculating such period, no account may be taken of any period during which the Secretary of State has applied to the court for leave to sell a transporter under Sch 1 but the court has not determined that the transporter may be sold: Carriers' Liability Regulations 2002, SI 2002/2817, reg 11. The 1999 Act s 37 applies to a transporter detained under s 36A (see TEXT AND NOTE 28) as it applies to a transporter detained under s 36(1), but for that purpose the court may release the transporter only if the court considers that the detention was unlawful or under s 37(3A) (and s 37(3) does not apply), and the reference in s 37(4) to the period of 84 days is to be taken as a reference to a period prescribed for this purpose: s 37(7) (added by the 2002 Act Sch 8 para 11(7)). The period prescribed for the purposes of s 37(7) is 14 days from the date the detention began: SI 2002/2817 reg 12.

Where the owner of a transporter is a party to the application to sell it, in determining whether to give leave the court must consider (1) the extent of any hardship likely to be caused by sale; (2) the extent, if any, to which the owner is responsible for the matters in respect of which the penalty notice was issued; and (3) any other matter which appears to the court to be relevant, whether specific to the circumstances of the case or of a general nature: 1999 Act Sch 1 para 2A (added by the 2002 Act Sch 8 para 16(3) (as to commencement see NOTE 7)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(i) Offences and Liabilities/204. Liability of carriers for passengers without proper documentation.

204. Liability of carriers for passengers without proper documentation.

The present system for carriers' liability (which has effect until a day to be appointed¹) provides that the owner or agent of any ship² or aircraft³ or the relevant train operator of any channel tunnel through train⁴ on which any person requiring leave to enter⁵ arrives in the United Kingdom without proper documentation⁶ is liable to pay a prescribed sum⁷ to the Secretary of State⁸. The liability arises in respect of any person requiring leave to enter who, on being required to do so by an immigration officer, fails to produce a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship⁹, and, if he is a person who requires a visa for entering or passing through the United Kingdom, a visa valid for the purpose¹⁰. No liability is incurred either in respect of any person who is shown by the owners, agents or relevant train operator to have produced to them or an employee of theirs or his the necessary document or documents when embarking on the ship, aircraft or through train for the voyage, flight or journey to the United Kingdom¹¹, or where under the law of the country in which the person embarked on a through train for carriage to the United Kingdom the employees or agents of the relevant train operator could not lawfully have required him when embarking to produce the document or documents specified¹² and refused him carriage for failing to produce them¹³.

As from a day to be appointed, the present system is replaced by a new system of liability for carriers¹⁴, which provides that the owner¹⁵ of any ship¹⁶, aircraft¹⁷ or road passenger vehicle¹⁸, or the operator of any train¹⁹, on which a person requiring leave to enter arrives in the United Kingdom without proper documentation²⁰, may be charged £2,000, or such other sum as may be prescribed by regulations, by the Secretary of State²¹. Liability for this charge arises in respect of any person requiring leave to enter who, on being required to do so by an immigration officer, fails to produce a valid passport with photograph or some other document

satisfactorily establishing his identity and nationality or citizenship²², and, if he requires a visa²³, a valid visa of the required kind²⁴. No charge is payable in respect of any person who is shown by the owner or train operator to have produced the required document or documents to him or his representative²⁵ when embarking on the ship or aircraft for the voyage or flight to the United Kingdom or on the vehicle or train for the journey to the United Kingdom²⁶, nor is any charge payable by a train operator, or by the owner of a road passenger vehicle, in respect of a person, if he shows that: (1) neither he nor his representative was permitted, under the law applicable to the place where the person embarked on his journey to the United Kingdom, to require that person to produce to him when embarking the required document or documents; (2) he had in place satisfactory arrangements (including, where appropriate, arrangements with other persons) designed to ensure that he did not carry passengers who did not, or might not, have documents of the required kind; (3) all such steps as were practicable were taken in accordance with the arrangements to establish whether the person had the required document or documents; and (4) all such steps as were practicable were taken in accordance with the arrangements to prevent the person's arrival in the United Kingdom where the person refused to produce the required document or documents to a person acting in accordance with the arrangements, or for other reasons it appeared that the person did not, or might not, have the required document or documents²⁷.

The new system will provide that²⁸, where any charge has been imposed in respect of a passenger who has arrived without proper documentation²⁹, a senior officer³⁰ may, pending payment of that charge, detain either the transporter³¹ in which the person in respect of whom the charge was imposed was carried or any other transporter used (on any route) in the course of providing a service of carriage of passengers by sea, air or land by the person on whom the charge was imposed³². Unless the Secretary of State was acting unreasonably in imposing the charge, such detention is lawful even if it is subsequently established that the imposition of the charge on which the detention was based was ill-founded³³. Failing release of the transporter by the court³⁴, the Secretary of State may sell it if the charge in question and connected expenses are not paid before the end of the period of 84 days beginning with the date on which the detention began³⁵.

In addition to the liabilities described above, owners and agents of ships³⁶ and aircraft³⁷ and operators of the international train service³⁸ may also be liable to pay to the Secretary of State on demand any expenses of detaining in the United Kingdom certain illegal entrants and other persons without leave to enter who arrive as a passenger of any such ship, aircraft or train³⁹.

1 The Immigration (Carriers' Liability) Act 1987 (see, so far as relevant, the text and notes 2-13 *infra*) is repealed by the Immigration and Asylum Act 1999 s 169(3), Sch 16, as from a day to be appointed under s 170(4), (5). At the date at which this volume states the law no such day had been appointed. As from a day to be appointed a new system of carriers' liability under ss 40, 42, Sch 1 takes effect in place of that under the Immigration (Carriers' Liability) Act 1987 s 1: see the text and notes 14-39 *infra*.

2 For the meaning of 'ship' see para 87 note 2 *ante*; definition applied by *ibid* s 2(2) (prospectively repealed: see note 1 *supra*).

3 For the meaning of 'aircraft' see para 87 note 3 *ante*; definition applied by *ibid* s 2(2) (prospectively repealed: see note 1 *supra*).

4 For these purposes 'through train' means a train, other than a shuttle train as defined in the Channel Tunnel Act 1987 s 1(9) (see para 87 note 5 *ante*), which for the purposes of ss 11, 12 is engaged on an international service within the meaning of s 13(6) (see para 87 note 1 *ante*), and 'relevant train operator' means the operator of through trains who embarked the person concerned for carriage to the United Kingdom on the through train on which he arrived: Immigration (Carriers' Liability) Act 1987 s 1(3) (prospectively repealed: see note 1 *supra*); Channel Tunnel (Carriers' Liability) Order 1998, SI 1998/1015, arts 2, 3(1), (2)(a)(i), (b), (f). As to the meaning of 'United Kingdom' see para 5 note 1 *ante*.

5 As to leave to enter see para 86 *ante*.

6 See the text and notes 9-10 *infra*.

7 le prescribed by an order made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Immigration (Carriers' Liability) Act 1987 s 1(3) (prospectively repealed: see note 1 supra); Channel Tunnel (Carriers' Liability) Order 1998, SI 1998/1015, art 3(1), (2)(f). See note 8 infra. As to the Secretary of State see para 2 ante.

The Immigration (Carriers' Liability) Act 1987 s 1 (as amended) extends to the Channel Islands and the Isle of Man, subject to the modifications contained in the Immigration (Isle of Man) Order 1991, SI 1991/2630, art 3(3), Sch 1 Pt III para 1; the Immigration (Guernsey) Order 1993, SI 1993/1796, art 3(3), Sch 1 Pt II para 1; and the Immigration (Jersey) Order 1993, SI 1993/1797, art 3(3), Sch 1 Pt II para 1.

8 See the Immigration (Carriers' Liability) Act 1987 s 1(1) (prospectively repealed: see note 1 supra). The sum is currently £2,000 and is payable on demand: s 1(1); Immigration (Carriers' Liability Prescribed Sum) Order 1991, SI 1991/1497. Any sums so received by the Secretary of State are paid into the Consolidated Fund: Immigration (Carriers' Liability) Act 1987 s 1(5) (prospectively repealed: see note 1 supra).

9 Ibid s 1(1)(a). For these purposes a document is regarded as being what it purports to be unless its falsity is reasonably apparent: s 1(4). As to the prospective repeal of the Immigration (Carriers' Liability) Act 1987 see note 1 supra.

10 Ibid s 1(1)(b) (amended by the Asylum and Immigration Appeals Act 1993 s 12(1), (2)). As to the prospective repeal of the Immigration (Carriers' Liability) Act 1987 see note 1 supra. See note 9 supra. As to entry visas see para 86 ante. As to visas for transit passengers see s 1A (as added; prospectively repealed); and para 95 ante. Until the day appointed for the repeal of s 1 (see note 1 supra) these provisions have effect in relation to a visa national required to hold an EEA family permit as they apply to a person required to hold a visa under the Immigration Act 1971: see the Immigration (European Economic Area) Order 1994, SI 1994/1895, art 19 (revoked: continued in force until the day appointed for the repeal of the Immigration (Carriers' Liability) Act 1987 s 1 by the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 1(1), (3)). As to visa nationals see para 96 ante. As to the issue of EEA family permits see para 229 post.

11 Immigration (Carriers' Liability) Act 1987 s 1(2) (prospectively repealed: see note 1 supra); Channel Tunnel (Carriers' Liability) Order 1998, SI 1998/1015, art 3(1), (2)(a)(ii), (b)-(d).

12 le the document or documents specified in the Immigration (Carriers' Liability) Act 1987 s 1(1) (see the text and notes 9-10 supra). As to the prospective repeal of the Immigration (Carriers' Liability) Act 1987 see note 1 supra.

13 Ibid s 1; Channel Tunnel (Carriers' Liability) Order 1998, SI 1998/1015, art 3(1), (2)(e). As to the prospective repeal of the Immigration (Carriers' Liability) Act 1987 see note 1 supra.

14 At the date at which this volume states the law the Immigration and Asylum Act 1999 s 40(1)-(8), (11)-(13) were yet to be brought into force by order under s 170(4).

15 As to the meaning of 'owner' see para 203 note 10 ante.

16 As to the meaning of 'ship' see para 203 note 5 ante.

17 As to the meaning of 'aircraft' see para 203 note 6 ante.

18 'Road passenger vehicle' means a vehicle which is adapted to carry more than eight passengers and is being used for carrying passengers for hire or reward, or which is not so adapted but is being used for carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers: Immigration and Asylum Act 1999 s 40(11). As to the meaning of 'vehicle' see para 203 note 4 ante.

19 For the meaning of 'train' see para 203 note 10 ante. For these purposes 'train operator', in relation to a person arriving in the United Kingdom on a train, means the operator of trains who embarked that person on that train for the journey to the United Kingdom: ibid s 43. Where the Secretary of State is satisfied that there is in force between the United Kingdom and a specified country an agreement providing for the operation of United Kingdom immigration control in that country or for the checking of passports and visas there, he may by order provide that s 40 does not apply in relation to passengers arriving in the United Kingdom on a train who embarked on the journey to the United Kingdom in that country (as specified in the order), or at places so specified within a country so specified: s 40(9), (10). At the date at which this volume states the law s 40(9), (10) was in force but no such order had been made. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante. 'Country' includes any territory: s 167(1).

20 See the text and notes 22-24 infra.

21 Immigration and Asylum Act 1999 s 40(1), (2) (not yet in force). See note 14 supra. At the date at which this volume states the law no such regulations had been made. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante. The charge is payable to the Secretary of State on

demand: s 40(3) (not yet in force). Where a person arrives in the United Kingdom in circumstances in which the Secretary of State is entitled to impose on the owner of a road passenger vehicle a charge in respect of that person, and the vehicle arrived in the United Kingdom in a ship or aircraft, the Secretary of State may impose a charge in respect of the arrival of the vehicle, or in respect of the arrival of the ship or aircraft, but not in respect of both: s 40(7), (8) (not yet in force).

The imposition of charges for passengers without valid or current visas were held not to amount to an unlawful interference with free movement rights of EEA nationals and their families (see para 225 et seq post), or an unlawful restriction on the right to provide services, in *R v Secretary of State for the Home Department, ex p Hoverspeed* [1999] INLR 591.

22 Immigration and Asylum Act 1999 s 40(1)(a) (not yet in force). See note 14 supra.

23 A person requires a visa for these purposes if he requires one under the Immigration Rules for entry into the United Kingdom or for passing through the United Kingdom as a result of the Immigration and Asylum Act 1999 s 41 (see para 95 ante): s 40(12) (not yet in force). See note 14 supra. As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).

24 Immigration and Asylum Act 1999 s 40(1)(b) (not yet in force). See note 14 supra. For the purpose of satisfying a requirement to produce a visa under s 40(1)(b) a 'valid visa of the required kind' includes a family permit or residence document required for the admission of a visa national under the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 12 (right of admission): reg 7. As to the modification of regs 7, 12 in relation to Swiss nationals, their family members and posted workers see the Immigration (Swiss Free Movement of Persons) (No 3) Regulations 2002, SI 2002/1241, reg 2(3), Schedule para 3. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante. An EEA family permit is a document issued to a person, in accordance with the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 10 or reg 13, in connection with his admission to the United Kingdom: reg 2(1). 'Residence document' means a document issued to a person who is not an EEA national, in accordance with reg 10 or reg 15, as proof of the holder's right of residence in the United Kingdom: reg 2(1). As to the issue of EEA family permits see para 229 post. For the meaning of 'EEA national' see para 227 post.

25 'Representative', in relation to a person, means an employee or agent of his: Immigration and Asylum Act 1999 s 40(13) (not yet in force). See note 14 supra.

26 Ibid s 40(4) (not yet in force). See note 14 supra. For the purposes of s 40(4), (5) (not yet in force), a document is regarded as being what it purports to be unless its falsity is reasonably apparent, and is regarded as relating to the person producing it unless it is reasonably apparent that it relates to another person: s 40(6) (not yet in force).

27 Ibid s 40(5) (not yet in force). See notes 14, 26 supra.

28 At the date at which this volume states the law *ibid* s 42(1)-(7) was yet to be brought into force by order under s 170(4).

29 *Ie* imposed under *ibid* s 40 (not yet in force) (see the text and notes 14-27 supra).

30 For the meaning of 'senior officer' see para 203 note 24 ante.

31 For the meaning of 'transporter' see para 203 note 10 ante.

32 Immigration and Asylum Act 1999 s 42(1) (not yet in force). Detention under s 42(1) may continue pending payment of any expenses reasonable incurred by the Secretary of State in connection with the detention: s 42(2), (7) (not yet in force).

33 Ibid s 42(5), (6) (not yet in force).

34 The court may release the transporter if it considers that satisfactory security has been tendered in place of the transporter for the payment of the charge alleged to be due (and any connected expenses), that there is no significant risk that the charge and any connected expenses will not be paid, or that there is a significant doubt as to whether the charge is payable and the applicant has a compelling need to have the transporter released: s 42(3) (not yet in force). For the meaning of 'the court' see para 203 note 29 ante.

35 Ibid s 42(4) (not yet in force). The sale of a transporter requires the leave of the court, and the court may not give its leave except on proof that the penalty or charge is or was due, that the person liable to pay it or any connected expenses has failed to do so, and that the transporter which the Secretary of State seeks leave to sell is liable to sale: Immigration and Asylum Act 1999 s 42(8), Sch 1 para 1. At least 21 days before applying to the court for leave to sell a transporter, the Secretary of State must, for the purpose of bringing the proposed application to the notice of persons whose interests may be affected by a decision of the court to give leave and for affording to any such person an opportunity of becoming a party to the proceedings if the Secretary of State

applies for leave, publish in the London, Edinburgh or Belfast Gazette (depending on where the transporter is detained), and in one or more local newspapers circulating in the locality in which the transporter is detained, and, unless it is impracticable to do so, serve on those persons on whom a relevant demand for payment has been made, a notice: (1) stating the country of registration and registration number of the transporter (where reasonably possible); (2) stating the type of transporter and any distinguishing features or markings that may serve to identify it; (3) stating that, on a date specified in the notice, the transporter was detained under the Immigration and Asylum Act 1999 s 42 as security for the payment of one or more charges due under s 40 and that unless payment of the sum due and any connected expenses is made within 21 days of the date of publication or (as the case may be) service of the notice, the Secretary of State may, without further notice, apply to the court for leave under Sch 1 to sell the transporter; and (4) inviting any person who considers his interests may be affected by any sale of the transporter (where the notice is published in a Gazette or newspaper), or the person on whom the notice is served, to inform the Secretary of State in writing within 21 days of the date of publication or (as the case may be) service of the notice if he wishes to become a party to the proceedings on the application: Immigration and Asylum Act 1999 Sch 1 para 2; Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, regs 8(1)(a), (b)(ii), 9(1)(a), (b), (c)(i), (d). For these purposes 'relevant demand for payment' means a demand for payment of any charges or expenses in respect of which the transporter concerned is detained under the Immigration and Asylum Act 1999 s 42: Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, reg 8(2) (b). A notice may be served on a person under reg 8(1)(b) by delivering it to that person, leaving it at his proper address, sending it to his proper address by first class post in a prepaid registered envelope or by the recorded delivery service, facsimile, sent to his usual or last known business facsimile number, or by electronic mail, sent to his usual or last known business electronic mail address: reg 9(2). Any notice required to be served on any body corporate or unincorporated association under reg 8(1)(b) may be served on the secretary or clerk or other similar officer of that body, except in the case of a partnership, where it may be served on a partner or a person having control or management of the partnership business: reg 9(3), (4). For these purposes, the proper address of any person on whom or to whom any such notice is to be served is his last known place of business or abode, except that such address must be the address of the registered office or principal office of the body corporate (in the case of a body corporate or its secretary or clerk), the address of the principal office of the association (in the case of an unincorporated association (other than a partnership) or its secretary or clerk), or the address of the principal office of the partnership (in the case of a partnership or a partner or person having control or management of the partnership business), and for these purposes the principal office of a company registered outside the United Kingdom, or of an unincorporated association or partnership carrying on business outside the United Kingdom, is, if it has an office within the United Kingdom, its sole or principal office there: reg 9(5). Any notice which is sent by post in accordance with these provisions to a place outside the United Kingdom must be sent by airmail or by some other equally expeditious means: reg 9(6). For these purposes, where a notice is sent by first class post in a prepaid registered envelope or by the recorded delivery service, addressed to the person to whom the notice is required to be served, it is to be taken to have been received by (and served on) that person on the second day after the day on which it was sent; where a notice is sent by facsimile, to the last known business facsimile number of the person to whom notice is required to be served, it is to be taken to have been received by (and served on) that person on the day on which it was sent; where a notice is sent by electronic mail, to the last known business electronic mail address of the person to whom notice is required to be served, it is taken to have been received by (and served on) that person on the day on which it was sent; and where a notice is sent in accordance with reg 9(6), addressed to the person to whom notice is required to be served, it is to be taken to have been received by (and served on) that person on the second day after the day on which it was sent: reg 11. Failure to comply with any of the requirements for notifying a proposed sale is actionable against the Secretary of State at the suit of any person suffering loss in consequence of the sale, but it does not affect the validity of a sale after it has taken place: Immigration and Asylum Act 1999 Sch 1 para 4.

If leave for sale is given, the Secretary of State must secure that the transporter is sold for the best price that can reasonably be obtained: Sch 1 para 3. Failure to comply with this requirement is actionable against the Secretary of State at the suit of any person suffering loss in consequence of the sale, but it does not affect the validity of a sale after it has taken place: Sch 1 para 4.

The proceeds of any sale under s 42 must be applied (in order of priority): (a) in payment of any expenses reasonably incurred by the Secretary of State in connection with the detention and sale of the transporter, including the Secretary of State's expenses in connection with the application to court; (b) in payment of the penalties or (as the case may be) charges which the court has found to be due; (c) in payment of any duty (whether of customs or excise) chargeable on imported goods or value added tax which is due in consequence of the transporter having been brought into the United Kingdom; (d) where the transporter is an aircraft, in payment of any charge in respect of the aircraft which is due by virtue of regulations under the Civil Aviation Act 1982 s 73 (as amended); and (e) any surplus must be paid to or among the person or persons whose interests in the transporter have, to the knowledge of the Secretary of State, been divested by reason of the sale: Immigration and Asylum Act 1999 Sch 1 para 5; Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000, SI 2000/685, reg 10.

36 As to the meaning of 'ship' see para 87 note 2 ante.

37 As to the meaning of 'aircraft' see para 87 note 3 ante.

38 For the meaning of 'international service' see para 87 note 1 ante.

39 See the Immigration Act 1971 Sch 2 paras 19, 20 (amended by the British Nationality Act 1981 s 39(6), Sch 4 para 3(1); the Asylum and Immigration Act 1996 s 12(1), Sch 2 paras 8, 9; the Channel Tunnel (Fire Services, Immigration and Prevention of Terrorism) Order 1990, SI 1990/2227, art 3, Sch 1 Pt I; and the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 9, Sch 6 Pt I). As to the modification of the Immigration Act 1971 Sch 2 paras 19, 20 (as amended) for the purposes of the security arrangements for the Channel Tunnel see the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(11)(q); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, arts 4(1), 7. Liability for detention costs extends to the first 14 days only; is not incurred in respect of persons who held a certificate of entitlement or a current entry clearance or work permit; and expenses paid in respect of persons subsequently given leave to enter the United Kingdom are refundable. See para 159 ante.

UPDATE

204 Liability of carriers for passengers without proper documentation

NOTE 7--SI 1991/2630 replaced: Immigration (Isle of Man) Order 2008, SI 2008/680.

TEXT AND NOTES 14-27--1999 Act s 40 now ss 40-40B (substituted by the Nationality, Immigration and Asylum Act 2002 Sch 8 para 13).

Now, if an individual requiring leave to enter the United Kingdom arrives in the United Kingdom by ship or aircraft and, on being required to do so by an immigration officer, fails to produce (1) an immigration document which is in force, and which satisfactorily establishes his identity and his nationality or citizenship; and (2) if the individual requires a visa, a visa of the required kind, the Secretary of State may charge the owner of the ship or aircraft, in respect of the individual, the sum of £2,000, or such other sum as he may substitute by order: 1999 Act s 40(1), (2), (10). For these purposes an individual requires a visa if under the immigration rules he requires a visa for entry into the United Kingdom, or as a result of s 41 he requires a visa for passing through the United Kingdom: s 40(6). The charge is payable to the Secretary of State on demand: s 40(3). No charge is payable in respect of any individual who is shown by the owner to have produced the required document or documents to the owner or his employee or agent when embarking on the ship or aircraft for the voyage or flight to the United Kingdom: s 40(4). For the purpose of s 40(4) an owner is entitled to regard a document as being what it purports to be unless its falsity is reasonably apparent, and as relating to the individual producing it unless it is reasonably apparent that it does not relate to him: s 40(5). The Secretary of State may by order amend s 40 for the purpose of applying it in relation to an individual who requires leave to enter the United Kingdom, and arrives in the United Kingdom by train: s 40(7). Such an order may provide for the application of s 40 except in cases of a specified kind and subject to a specified defence: s 40(8). For these purposes 'immigration document' means a passport, and a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport: s 40(9).

If the Secretary of State decides to charge a person under s 40, he must notify the person of his decision: s 40A(1). A notice under s 40A(1) (a 'charge notice') must (a) state the Secretary of State's reasons for deciding to charge the person; (b) state the amount of the charge; (c) specify the date before which, and the manner in which, the charge must be paid; (d) include an explanation of the steps that the person may take if he objects to the charge; and (e) include an explanation of the steps that the Secretary of State may take to recover any unpaid charge: s 40A(2). Where a person on whom a charge notice is served objects to the imposition of the charge on him, he may give a notice of objection to the Secretary of State, which must be in writing, give the objector's reasons, and be given before the end of such period as may be

prescribed: s 40A(3), (4) (s 40A(3) amended by the Immigration, Asylum and Nationality Act 2006 s 56(2), Sch 1 para 13). The period so prescribed is 28 days from the date the person was served with the charge notice: Carriers' Liability Regulations 2002, SI 2002/2817, reg 6. Where the Secretary of State receives a notice of objection, he must consider it, and determine whether or not to cancel the charge: 1999 Act s 40A(5). Where the Secretary of State considers a notice of objection, he must inform the objector of his decision before the end of such period as may be prescribed, or such longer period as he may agree with the objector: s 40A(6). The period so prescribed is 70 days from the date the objector was served with the charge notice: SI 2002/2817 reg 7. Any sum payable to the Secretary of State as a charge under the 1999 Act s 40 may be recovered by the Secretary of State as a debt due to him, and in proceedings for enforcement of a charge no question may be raised as to its validity: s 40A(7), (8). Section 35(12), (13) (see PARA 203) have effect for these purposes as they have effect for the purpose of s 35(1), (7) and (10): s 40A(9).

A person may appeal to the court against a decision to charge him under s 40: s 40B(1). On such an appeal the court may allow the appeal and cancel the charge, or dismiss the appeal: s 40B(2). Notwithstanding any provision of the CPR, the appeal is a rehearing of the Secretary of State's decision to impose a charge, and may be determined having regard to matters of which the Secretary of State was unaware: s 40B(3), (4). The appeal may be brought by a person against a decision to charge him whether or not he has given notice of objection under s 40A(3): s 40B(5).

NOTE 24--SI 2000/2326 now Immigration (European Economic Area) Regulations 2006, SI 2006/1003 (amended by SI 2009/1117). SI 2000/2326 regs 7, 12 now SI 2006/1003 reg 11, Sch 2 para 3.

TEXT AND NOTES 28-35--1999 Act s 42 repealed: 2002 Act Sch 8 para 14. The 1999 Act Sch 1 (amended by the 2002 Act Sch 8 para 16) now only applies to the sale of transporters under s 37 (see PARA 203).

NOTE 35--SI 2000/685 replaced: SI 2002/2817 (amended by SI 2004/244).

NOTE 39--SI 2004/1405 art 7 amended: SI 2007/3579.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(i) Offences and Liabilities/205. Defences based on the Refugee Convention.

205. Defences based on the Refugee Convention.

It is a defence for a refugee¹ charged with any offence or any attempt to commit an offence of: (1) forgery and connected offences²; (2) deception³; (3) falsification of documents⁴, to show that, having come to the United Kingdom directly from a country where his life or freedom was threatened⁵, he⁶: (a) presented himself to the authorities in the United Kingdom⁷ without delay⁸; (b) showed good cause for his illegal entry or presence⁹; and (c) made a claim for asylum as soon as was reasonably practicable after his arrival in the United Kingdom¹⁰. If, in coming from the country where his life or freedom was threatened, the refugee stopped in another country outside the United Kingdom, the defence¹¹ is only available if he shows that he could not reasonably have expected to be given protection¹² in that other country¹³. A refugee who has made a claim for asylum is not entitled to the defence in relation to any offence committed by him after making that claim¹⁴.

If the Secretary of State has refused to grant a claim for asylum made by a person who claims he has the defence, that person is to be taken not to be a refugee unless he shows that he is¹⁵.

A person who was convicted of an offence under heads (1) to (3) above before 11 November 1999¹⁶, but at no time during the proceedings for that offence argued that he had a defence based on the Refugee Convention¹⁷, may apply to the Criminal Cases Review Commission¹⁸ with a view to his case being referred to the Court of Appeal¹⁹ by the Commission on the ground that he would have had a defence²⁰ on or after that date²¹.

1 'Refugee' has the same meaning as it has for the purpose of the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906): Immigration and Asylum Act 1999 s 31(6).

A person seeking asylum is a presumptive refugee: *R v Uxbridge Magistrates' Court, ex p Adimi*; *R v Secretary of State for the Home Department, ex p Sorani*; *R v Crown Prosecution Service, ex p Sorani*; *R v Secretary of State for the Home Department, ex p Kazu* [2001] QB 667, [1999] 4 All ER 520, DC. See also *Khaboka v Secretary of State for the Home Department* [1993] Imm AR 484, CA.

2 Immigration and Asylum Act 1999 s 31(3)(a). The text refers to forgery and connected offences under the Forgery and Counterfeiting Act 1981 Pt I (ss 1-13) (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 346 et seq. The Secretary of State may by order amend the Immigration and Asylum Act 1999 s 31(3) by adding offences to those for the time being listed there: s 31(10)(a). At the date at which this volume states the law no such orders had been made. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante. No order is to be made under s 31(10) unless a draft of the order has been laid before Parliament and approved by a resolution of each House (s 166(4)(c)), and accordingly any statutory instrument made under s 31(10) is not subject to annulment by a resolution of either House of Parliament (s 166(5)(a)).

As to the application of s 31 to Scotland see s 31(4), (9), (10)(b), (11).

3 Ibid s 31(3)(b). See note 2 supra. The text refers to the offence of deception under s 24A (as added): see para 198 ante.

4 Ibid s 31(3)(c). See note 2 supra. The text refers to the offence under s 26(1)(d) (as amended): see para 201 ante.

5 Ie where his life or freedom was threatened within the meaning of the Refugee Convention: see ibid s 31(1).

6 Ibid s 31(1).

7 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

8 Immigration and Asylum Act 1999 s 31(1)(a).

9 Ibid s 31(1)(b).

10 Ibid s 31(1)(c). The Refugee Convention, art 31 applies where the illegal entry or use of false documents or delay can be attributed to a bona fide desire to seek asylum: *R v Uxbridge Magistrates' Court, ex p Adimi*; *R v Secretary of State for the Home Department, ex p Sorani*; *R v Crown Prosecution Service, ex p Sorani*; *R v Secretary of State for the Home Department, ex p Kazu* [2001] QB 667, [1999] 4 All ER 520, DC.

11 Ie under the Immigration and Asylum Act 1999 s 31(1).

12 Ie under the Refugee Convention.

13 Immigration and Asylum Act 1999 s 31(2).

Refugees have some element of choice as to where they may claim asylum, and a mere short-term stopover en route to the intended sanctuary cannot forfeit the protection of the Refugee Convention, art 31(1): *R v Uxbridge Magistrates' Court, ex p Adimi*; *R v Secretary of State for the Home Department, ex p Sorani*; *R v Crown Prosecution Service, ex p Sorani*; *R v Secretary of State for the Home Department, ex p Kazu* [2001] QB 667, [1999] 4 All ER 520, DC. The touchstones for determining whether protection is excluded are the length of stay in the intermediate country, the reasons for delaying there, and whether or not the refugee sought or found in that country protection *de jure* or *de facto* from the persecution he was fleeing: *R v Uxbridge Magistrates' Court ex p Adimi*; *R v Secretary of State for the Home Department, ex p Sorani*; *R v Crown Prosecution Service, ex p Sorani*; *R v Secretary of State for the Home Department, ex p Kazu* supra.

14 Immigration and Asylum Act 1999 s 31(5).

15 Ibid s 31(7). The protection given by the Refugee Convention, art 31 applies not only to those ultimately recognised as refugees but to those claiming asylum in good faith: *R v Uxbridge Magistrates' Court, ex p Adimi*; *R v Secretary of State for the Home Department, ex p Sorani*; *R v Crown Prosecution Service, ex p Sorani*; *R v Secretary of State for the Home Department, ex p Kazir* [2001] QB 667, [1999] 4 All ER 520, DC.

16 Ie the date on which the Immigration and Asylum Act 1999 s 31 came into force: see s 170(3)(e).

17 Ie a defence based on the Refugee Convention, art 31(1).

18 As to the Criminal Cases Review Commission see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 2028 et seq.

19 As to the Court of Appeal see COURTS vol 10 (Reissue) para 634 et seq.

20 Ie under the Immigration and Asylum Act 1999 s 31.

21 Ibid s 31(8). As to altering the decision of magistrates see the Magistrates' Courts Act 1980 s 142 (as amended); and MAGISTRATES vol 29(2) (Reissue) para 762.

UPDATE

205-206 Defences based on the Refugee Convention, Power to search and arrest

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

205 Defences based on the Refugee Convention

TEXT AND NOTES--Where a person has been acquitted of an offence on grounds that he a defence under the 1999 Act s 31, it is an abuse of process to proceed with a separate charge on the same factual basis to which the defence does not apply: *R v Asfaw* [2008] UKHL 31, [2008] 1 AC 1061, [2008] 3 All ER 775. The Immigration and Asylum Act 1999 Act is binding in the United Kingdom irrespective of the fact that it is narrower than the Refugee Convention art 31: *R (on the application of Pepushi) v Crown Prosecution Service* [2004] EWHC 798 (Admin), [2004] All ER (D) 129 (May).

TEXT AND NOTES 1-10--Also, head (4) possessing a false identity document, ie an offence under the Identity Cards Act 2006 s 25(1) or (5) (see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 527A): 1999 Act s 31(3)(aa) (added by 2006 Act s 30(2)(a)).

NOTE 10--'As soon as was reasonably practicable' does not necessarily mean at the earliest possible moment: *R v Hasan* [2008] All ER (D) 116 (Nov), CA.

NOTE 14--See also *R v Hasan* NOTE 10 (brief stopover not fatal to defence).

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/3. Immigration/(5) Offences/(ii) Powers of Search and Arrest in connection with Offences/206. Power to search and arrest.

(ii) Powers of Search and Arrest in connection with Offences

206. Power to search and arrest.

A constable or immigration officer may arrest without warrant a person¹ who: (1) has committed or attempted to commit an offence of illegal entry, overstaying, deception or related offences², or whom he has reasonable grounds for suspecting has committed or attempted to commit such an offence³; or (2) has or has attempted to harbour an illegal entrant⁴, or whom he has reasonable grounds to suspect of so doing⁵. An immigration officer may arrest without warrant (a) a person who is assisting in a person's illegal entry or obtaining leave to remain in the United Kingdom by deception⁶, or whom he has reasonable grounds to suspect of so doing⁷; or (b) a person ('the suspect') who, or whom he has reasonable grounds to suspect, has or has attempted to obstruct an immigration officer⁸, or is, or attempting to, obstruct an immigration officer⁹.

The power under head (b) above is exercisable only if either the first or the second of the following conditions is satisfied¹⁰. The first condition is that it appears to the officer that service of a summons is impracticable or inappropriate because: (i) he does not know, and cannot readily discover, the suspect's name¹¹; (ii) he has reasonable grounds for doubting whether a name given by the suspect as his name is his real name¹²; (iii) the suspect has failed to give him a satisfactory address for service¹³; or (iv) he has reasonable grounds for doubting whether an address given by the suspect is a satisfactory address for service¹⁴. The second condition is that the officer has reasonable grounds for believing that arrest is necessary to prevent the suspect: (A) causing physical injury to himself or another person¹⁵; (B) suffering physical injury¹⁶; or (C) causing loss of or damage to property¹⁷.

If a justice of the peace is, by written information on oath, satisfied that there are reasonable grounds for suspecting that a person who is liable to be arrested for a relevant offence¹⁸ is to be found on any premises¹⁹, the justice may grant a warrant authorising any immigration officer or constable to enter, if need be by force, the premises named in the warrant for the purpose of searching for and arresting that person²⁰.

An immigration officer may enter and search any premises for the purpose of arresting a person for an offence of assisting in a person's illegal entry or obtaining leave to remain in the United Kingdom by deception²¹. This power may be exercised only to the extent that it is reasonably required for that purpose, and only if the officer has reasonable grounds for believing that the person whom he is seeking is on the premises²². In relation to premises consisting of two or more separate dwellings, the power is limited to entering and searching any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any such other dwelling, and any such dwelling in which the officer has reasonable grounds for believing that the person whom he is seeking may be²³.

1 Immigration Act 1971 s 28A(1), (4) (s 28A added by the Immigration and Asylum Act 1999 s 128; and the Immigration Act 1971 s 28A(4) modified for the purposes of the security arrangements for the Channel Tunnel by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 7(1), Sch 4 para 1(9A) (itself added by SI 2001/1544); and the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, art 7). As to powers of arrest see the Police and Criminal Evidence Act 1984 Pt III (ss 24-32) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 924 et seq. As to the extended detention of suspected international terrorists see para 167 ante. As to the office of constable see generally POLICE vol 36(1) (2007 Reissue) para 101 et seq.

2 The offences under the Immigration Act 1971 s 24 (see para 197 ante), or s 24A (as added) (see para 198 ante).

3 Ibid s 28A(1) (as added: see note 1 supra). As to what constitutes reasonable grounds for suspicion see *O'Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286, [1997] 1 All ER 129, HL (decided under the Prevention of Terrorism (Temporary Provisions) Act 1984 s 12 (repealed)). As to the prevention of terrorism generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 383 et seq.

The Immigration Act 1971 s 28A(1) (as added) does not apply in relation to an offence under s 24(1)(d) (see para 197 ante); s 28A(2) (as so added). As to the application of s 28A (as added) to Scotland see s 28A(7), (11) (as so added).

An immigration officer exercising any specified power to arrest or search a person or enter and search premises must have regard to such provisions of a code of practice as may be specified in a direction given by the Secretary of State, for the time being in force under the Police and Criminal Evidence Act 1984 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE): see the Immigration and Asylum Act 1999 s 145(1), (4); and the Immigration (PACE Codes of Practice) Direction 2000.

4 See the Immigration Act 1971 s 28A(4)(a) (as added: see note 1 supra). The text refers to offences under s 25(2) (as amended): see para 199 ante. For the meaning of 'illegal entrant' see para 151 ante.

5 Ibid s 28A(4)(b) (as added: see note 1 supra). In relation to the exercise of the powers conferred by s 28A(3)(b) (see the text to note 7 infra), s 28A(4)(b) and s 28A(5) (see head (2) in the text), it is immaterial that no offence has been committed: s 28A(10) (as so added).

6 See ibid s 28A(3)(a) (as added: see note 1 supra). The text refers to offences under s 25(1) (as amended): see para 199 ante.

7 Ibid s 28A(3)(b) (as added: see note 1 supra).

8 See ibid s 28A(5)(a) (as added: see note 1 supra). The text refers to offences under s 26(1)(g): see para 201 ante.

9 Ibid s 28A(5)(b) (as added: see note 1 supra).

10 Ibid s 28A(6) (as added: see note 1 supra).

11 Ibid s 28A(7)(a) (as added: see note 1 supra).

12 Ibid s 28A(7)(b) (as added: see note 1 supra).

13 Ibid s 28A(7)(c) (s 28A as added: see note 1 supra). An address is a satisfactory address for service if it appears to the officer that the suspect will be at that address for a sufficiently long period for it to be possible to serve him with a summons, or that some other person specified by the suspect will accept service of a summons for the suspect at that address: s 28A(9) (as so added).

14 Ibid s 28A(7)(d) (as added: see note 1 supra).

15 Ibid s 28A(8)(a) (as added: see note 1 supra).

16 Ibid s 28A(8)(b) (as added: see note 1 supra).

17 Ibid s 28A(8)(c) (as added: see note 1 supra).

18 'Relevant offence' means an offence under ibid s 24(1)(a), s 24(1)(b), s 24(1)(c), s 24(1)(d), s 24(1)(e) (as amended) or s 24(1)(f) (see para 197 ante), s 24A (as added) (see para 198 ante) or 25(2) (as amended) (see para 199 ante): s 28B(5) (s 28B added by the Immigration and Asylum Act 1999 s 129).

19 Immigration Act 1971 s 28B(1) (as added: see note 18 supra). As to the application of s 28B (as added) to Scotland see s 28B(3), (4) (as so added).

20 Ibid s 28B(2) (as added: see note 18 supra). As to the power to enter and search premises and the power to search arrested persons see paras 207-208 post.

21 Ibid s 28C(1) (s 28C added by the Immigration and Asylum Act 1999 s 130). The text refers to offences under the Immigration Act 1971 s 25(1) (as amended): see para 199 ante. Cf police powers under the Police and Criminal Evidence Act 1984 s 17 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 884.

22 Immigration Act 1971 s 28C(2) (s 28C as added: see note 21 supra). The power may be exercised only if the officer produces identification showing that he is an immigration officer (whether or not he is asked to do so): s 28C(4) (as so added).

23 Ibid s 28C(3) (as added: see note 21 supra).

UPDATE

205-206 Defences based on the Refugee Convention, Power to search and arrest

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

206-210 Powers of Search and Arrest in connection with Offences

For provision relating to the search for evidence of nationality see PARA 210A post.

206 Power to search and arrest

TEXT AND NOTES--An immigration officer may also arrest without warrant a person who has committed an offence of falsifying a registration card, or possessing an immigration stamp without reasonable excuse (ie offences under the 1971 Act ss 26A, 26B) (see PARA 201), or whom he has reasonable grounds for suspecting has committed such offences: s 28A(9A) (added by the Nationality, Immigration and Asylum Act 2002 s 150(1); and amended by the Serious Organised Crime and Police Act 2005 Sch 7 para 53).

An immigration officer may also arrest without a warrant a person whom he has reasonable grounds for suspecting has committed a specified offence (ie an offence of conspiracy at common law (in relation to conspiracy to defraud), an offence under the Offences against the Person Act 1861 s 57 (bigamy), the Perjury Act 1911 ss 3, 4 (false statements), s 7 (aiding and abetting etc) if in relation to an offence under ss 3, 4, the Theft Act 1968 ss 1 (theft), 15 (obtaining property by deception), 16 (obtaining pecuniary advantage by deception), 17 (false accounting), 22 (handling stolen goods), the Theft Act 1978 ss 1, 2 (obtaining services, or evading liability, by deception), Forgery and Counterfeiting Act 1981 ss 1 (forgery), 2 (copyright false instrument), 3 (using false instrument), 4 (using copy of false instrument), 5(1), (3) (false documents), the Sexual Offences Act 2003 ss 57-59 (trafficking for sexual exploitation), the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 4 (trafficking people for exploitation)): s 14.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 1--Now refers to an immigration officer only: 1971 Act s 28A(1) (amended by the Serious Organised Crime and Police Act 2005 Sch 7 para 53).

NOTE 1--SI 2004/1405 art 7 amended: SI 2007/3579.

TEXT AND NOTES 4, 5--1971 Act s 28A(4) repealed: Nationality, Immigration and Asylum Act 2002 s 144(3)(b). In the 1971 Act s 28A(10) (amended by the 2002 Act s 144(3)(c)) omit reference to s 28A(4)(b).

TEXT AND NOTES 6, 7--Now head (a) a person who has committed an offence under the 1971 Act ss 25, 25A or 25B (see PARA 199), or whom he has reasonable grounds to suspect of so doing: s 28A(3) (amended by the Nationality, Immigration and Asylum Act 2002 s 144(3)(a)).

TEXT AND NOTE 17--If, on an application by an immigration officer, a justice of the peace is satisfied that there are reasonable grounds for suspecting that a person has committed an offence under the Immigration Act 1971 s 24(1)(d) (failure to comply with requirement to report to medical officer, or submit to medical test; see PARA 197), or under the Immigration, Asylum and Nationality Act 2006 s 21(1) (offence in

connection with employment of persons subject to immigration control: see PARA 200A.6), the justice of the peace may grant a warrant authorising any immigration officer to arrest the person: Immigration Act 1971 s 28AA (1), (2) (s 28AA added by the Nationality, Immigration and Asylum Act 2002 s 152; amended by UK Borders Act 2007 s 27).

NOTE 18--In the definition of 'relevant offence' omit reference to an offence under s 25(2), and add reference to offences under ss 26A or 26B (see PARA 201): 1971 Act s 28B(5) (amended by the Nationality, Immigration and Asylum Act 2002 ss 144(4), 150(2)).

TEXT AND NOTE 21--Replaced. An immigration officer may enter and search any premises for the purpose of arresting a person for an offence under the 1971 Act ss 25, 25A or 25B (see PARA 199): s 28C(1) (amended by the Nationality, Immigration and Asylum Act 2002 s 144(5)).

TEXT AND NOTE 23--A constable or immigration officer may enter and search any business premises for the purpose of arresting a person (1) for an offence under the 1971 Act s 24 (illegal entry; see PARA 197); (2) for an offence under s 24A (deception; see PARA 198); or (3) under Sch 2 para 17 (detention of persons liable to examination and removal; see PARA 156): s 28CA(1) (s 28CA added by the Nationality, Immigration and Asylum Act 2002 s 153(1)). For these purposes 'business premises' means premises, or any part of premises, not used as a dwelling: 1971 Act s 28L(2) (added by the 2002 Act s 155).

The power under the 1971 Act s 28CA(1) may be exercised only (a) to the extent that it is reasonably required for a purpose specified in s 28CA(1); (b) if the constable or immigration officer has reasonable grounds for believing that the person whom he is seeking is on the premises; (c) with the authority of the Secretary of State (in the case of an immigration officer) or a Chief Superintendent (in the case of a constable); and (d) if the constable or immigration officer produces identification showing his status: s 28CA(2). Authority for the purposes of head (c) may be given on behalf of the Secretary of State only by a civil servant of the rank of at least Assistant Director, and expires at the end of the period of seven days beginning with the day on which it is given: s 28CA(3). Head (d) applies whether or not a constable or immigration officer is asked to produce identification, but only where premises are occupied: s 28CA(4). Where a constable or immigration officer enters premises in reliance on this provision, and detains a person on the premises, a detainee custody officer may enter the premises for the purpose of carrying out a search: s 28CA(5), (6). 'Detainee custody officer' means a person in respect of whom a certificate of authorisation is in force under the Immigration and Asylum Act 1999 s 154 (see PARA 158); and 'search' means a search under Sch 13 para 2(1)(a) (see PARA 158): 1971 Act s 28CA(7). A person exercising a power under s 28CA may, if necessary, use reasonable force: 1999 Act s 146(2) (substituted by the 2002 Act s 153(2)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(ii) Powers of Search and Arrest in connection with Offences/207. Power to enter and search premises.

207. Power to enter and search premises.

If, on an application made by an immigration officer, a justice of the peace is satisfied that there are reasonable grounds for believing that: (1) a relevant offence¹ has been committed²; (2) there is material on premises³ specified in the application which is likely to be of substantial

value (whether by itself or together with other material) to the investigation of the offence⁴; (3) the material is likely to be relevant evidence⁵; (4) the material does not consist of or include items subject to legal privilege⁶, excluded material or special procedure material⁷; and (5) any of the specified conditions⁸ applies⁹, he may issue a warrant authorising an immigration officer to enter and search the premises¹⁰. An immigration officer may seize and retain anything for which a search has been authorised¹¹.

If a person is arrested for an offence¹² at a place other than a police station¹³, an immigration officer may enter and search any premises in which the person was when arrested, or in which he was immediately before he was arrested, for relevant evidence (that is evidence relating to the offence for which the arrest was made)¹⁴. The power may be exercised only if the officer has reasonable grounds for believing that there is relevant evidence on the premises, and only to the extent that it is reasonably required for the purpose of discovering relevant evidence¹⁵. An officer searching premises may seize and retain anything he finds which he has reasonable grounds for believing is relevant evidence¹⁶.

An immigration officer may enter and search any premises occupied or controlled by a person arrested for an offence of assisting in a person's illegal entry or obtaining leave to remain in the United Kingdom by deception¹⁷. This power may be exercised: (a) only if the officer has reasonable grounds for suspecting that there is relevant evidence¹⁸ on the premises¹⁹; (b) only to the extent that it is reasonably required for the purpose of discovering relevant evidence²⁰; and (c) only if a senior officer²¹ has authorised it in writing²². However, the power may be exercised before taking the arrested person to a place where he is to be detained, and without obtaining an authorisation under head (c) above, if the presence of that person at a place other than one where he is to be detained is necessary for the effective investigation of the offence²³. An officer searching premises may seize and retain anything he finds which he has reasonable grounds for suspecting is relevant evidence²⁴.

Where a person is arrested²⁵ or a person who was arrested by a constable²⁶ is detained by an immigration officer²⁷, an immigration officer may enter and search any premises occupied or controlled by the arrested person or in which that person was when he was arrested, or immediately before he was arrested, for relevant documents²⁸. This power may be exercised: (i) only if the officer has reasonable grounds for believing that there are relevant documents on the premises²⁹; (ii) only to the extent that it is reasonably required for the purpose of discovering relevant documents³⁰; and (iii) only if a senior officer³¹ has authorised its exercise in writing³². An immigration officer may conduct a search before taking the arrested person to a place where he is to be detained, and without obtaining an authorisation under head (iii) above, if the presence of that person at a place other than one where he is to be detained is necessary to make an effective search for any relevant documents³³. An officer searching premises may seize and retain any documents he finds which he has reasonable grounds for believing are relevant documents³⁴, but may not retain any such document for longer than is necessary in view of the purpose for which the person was arrested³⁵.

1 'Relevant offence' means an offence under the Immigration Act 1971 s 24(1)(a), s 24(1)(b), s 24(1)(c), s 24(1)(d), s 24(1)(e) (as amended) or s 24(1)(f) (see para 197 ante), s 24A (as added) (see para 198 ante) or s 25 (as amended) (see para 199 ante): s 28D(4) (s 28D added by Immigration and Asylum Act 1999 s 131).

2 Immigration Act 1971 s 28D(1)(a) (as added: see note 1 supra). As to the application of s 28D (as added) to Scotland see s 28D(7) (as so added). As to the application of s 28D (as added) to Northern Ireland see s 28D(6) (as so added).

3 'Premises' includes any place and, in particular, includes: (1) any vehicle, vessel, aircraft or hovercraft; (2) any offshore installation; and (3) any tent or movable structure: Police and Criminal Evidence Act 1984 s 23 (definition applied by the Immigration Act 1971 s 28L (added by the Immigration and Asylum Act 1999 s 139(1)). For the meaning of 'offshore installation' see the Mineral Workings (Offshore Installations) Act 1971 s 1.

4 Immigration Act 1971 s 28D(1)(b) (as added: see note 1 supra).

5 Ibid s 28D(1)(c) (s 28D as added: see note 1 supra). 'Relevant evidence' has the same meaning as that in the Police and Criminal Evidence Act 1984 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 873): Immigration Act 1971 s 28D(5) (as so added).

6 'Items subject to legal privilege' has the same meaning as in the Police and Criminal Evidence Act 1984 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 873): Immigration Act 1971 s 28L (as added: see note 3 supra).

7 Ibid s 28D(1)(d) (as added: see note 1 supra). As to excluded material and special procedure material generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) paras 875-876.

As from a day to be appointed, provision is made in relation to the obligation to return excluded and special procedure material: see the Criminal Justice and Police Act 2001 s 55, Sch 1 para 95 (not yet in force). At the date at which this volume states the law no such day had been appointed.

8 The conditions are that: (1) it is not practicable to communicate with any person entitled to grant entry to the premises; (2) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence; (3) entry to the premises will not be granted unless a warrant is produced; (4) the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry to them: Immigration Act 1971 s 28D(2) (as added: see note 1 supra).

9 Ibid s 28D(1)(e) (as added: see note 1 supra).

10 Ibid s 28D(1) (as added: see note 1 supra). Cf police powers under the Police and Criminal Evidence Act 1984 s 8 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 873.

An immigration officer exercising the power to enter and search premises must have regard to such a code of practice as may be specified in a direction given by the Secretary of State, for the time being in force under the Police and Criminal Evidence Act 1984 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE): see the Immigration and Asylum Act 1999 s 145(1), (4); and the Immigration (PACE Codes of Practice) Direction 2000.

11 Immigration Act 1971 s 28D(3) (as added: see note 1 supra). As from a day to be appointed, further provision is made in relation to powers of seizure from premises: see the Criminal Justice and Police Act 2001 s 50, Sch 1 para 15 (not yet in force). At the date at which this volume states the law no such day had been appointed. As to powers of entry, search and seizure generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 869 et seq.

An immigration officer exercising the power to seize property must have regard to such a code of practice as may be specified in a direction given by the Secretary of State, for the time being in force under the Police and Criminal Evidence Act 1984 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE): see the Immigration and Asylum Act 1999 s 145(1), (4); and the Immigration (PACE Codes of Practice) Direction 2000.

12 Ie under the Immigration Act 1971 Pt III (ss 24-28L) (as amended).

13 Ibid s 28E(1) (s 28E added by the Immigration and Asylum Act 1999 s 132(1)).

14 Immigration Act 1971 s 28E(2) (s 28E as added: see note 13 supra). In relation to premises consisting of two or more separate dwellings, the power is limited to entering and searching any dwelling in which the arrest took place or in which the arrested person was immediately before his arrest, and any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises: s 28E(4) (as so added).

15 Ibid s 28E(3) (as added: see note 13 supra).

16 Ibid s 28E(5) (as added: see note 13 supra). See note 11 supra. However, s 25E (as added) does not apply to items which the officer has reasonable grounds for believing are items subject to legal privilege: s 28E(6) (as so added).

17 Ibid s 28F(1) (s 28F added by the Immigration and Asylum Act 1999 s 133). The text refers to offences under the Immigration Act 1971 s 25(1) (as amended): see para 199 ante.

18 'Relevant evidence' means evidence, other than items subject to legal privilege, that relates to the offence in question: ibid s 28F(7) (as added: see note 17 supra).

19 Ibid s 28F(2)(a) (as added: see note 17 supra).

20 Ibid s 28F(2)(b) (as added: see note 17 supra).

21 'Senior officer' means an immigration officer not below the rank of chief immigration officer: *ibid* s 28F(8) (as added: see note 17 *supra*).

22 *Ibid* s 28F(2)(c) (as added: see note 17 *supra*). Section 28F(2)(c) (as added) is expressed to be subject to s 28F(3) (as added): see the text to note 23 *infra*.

23 *Ibid* s 28F(3) (s 28F as added: see note 17 *supra*). An officer who has relied on s 28F(3) (as added) must inform a senior officer as soon as is practicable: s 28F(4) (as so added). The officer authorising a search, or who is informed of one under s 28F(4) (as added), must make a record in writing of the grounds for the search, and the nature of the evidence that was sought: s 28F(5) (as so added).

24 *Ibid* s 28F(6) (as added: see note 17 *supra*). See note 11 *supra*.

25 *Ie* under *ibid* s 4(2), Sch 2 (both as amended).

26 *Ie* other than under *ibid* Sch 2 (as amended).

27 *Ibid* Sch 2 para 25A(1) (Sch 2 para 25A added by the Immigration and Asylum Act 1999 s 132(2)). The text refers to a person detained by an immigration officer under the Immigration Act 1971 Sch 2 (as amended).

28 *Ibid* Sch 2 para 25A(2) (as added: see note 27 *supra*). 'Relevant documents' means any documents which might: (1) establish the arrested person's identity, nationality or citizenship; or (2) indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go: Sch 2 para 25A(9) (as so added).

29 *Ibid* Sch 2 para 25A(3)(a) (as added: see note 27 *supra*).

30 *Ibid* Sch 2 para 25A(3)(b) (as added: see note 27 *supra*).

31 'Senior officer' means an immigration officer not below the rank of chief immigration officer: *ibid* Sch 2 para 25A(10) (as added: see note 27 *supra*).

32 *Ibid* Sch 2 para 25A(3)(c) (as added: see note 27 *supra*). Schedule 2 para 25A(3)(c) (as added) is expressed to be subject to Sch 2 para 25A(4) (as added): see Sch 2 para 25A(3)(c) (as so added).

33 *Ibid* Sch 2 para 25A(4) (as added: see note 27 *supra*). An officer who has conducted a search under Sch 2 para 25A(4) (as added) must inform a senior officer as soon as is practicable: Sch 2 para 25A(5) (as so added). The officer authorising a search, or who is informed of one under Sch 2 para 25A(5) (as added), must make a record in writing of: (1) the grounds for the search; and (2) the nature of the documents that were sought: Sch 2 para 25A(6) (as so added).

34 *Ibid* Sch 2 para 25A(7)(a) (as added: see note 27 *supra*). However, Sch 2 para 25A(7)(a) (as added) does not apply to documents which the officer has reasonable grounds for believing are items subject to legal privilege: Sch 2 para 25A(8) (as so added).

35 *Ibid* Sch 2 para 25A(7)(b) (as added: see note 27 *supra*).

UPDATE

206-210 Powers of Search and Arrest in connection with Offences

For provision relating to the search for evidence of nationality see PARA 210A post.

207 Power to enter and search premises

TEXT AND NOTES--Where (1) a person has been arrested for an offence under the Immigration Act 1971 s 24(1) (illegal entry) (see PARA 197) or s 24A(1) (deception) (see PARA 198); (2) a person has been arrested under Sch 2 para 17 (detention of persons liable to examination and removal) (see PARA 156); (3) a constable or immigration officer reasonably believes that a person is liable to arrest for an offence under ss 24(1), 24A(1); or (4) a constable or immigration officer reasonably believes that a person is liable to arrest under Sch 2 para 17, a constable or immigration officer may search business premises where the arrest was made, or where the person liable to arrest is, if the constable or immigration officer reasonably believes that a person has

committed an immigration employment offence in relation to the person arrested or liable to arrest, and that employee records, other than items subject to legal privilege, will be found on the premises and will be of substantial value (whether on their own or together with other material) in the investigation of the immigration employment offence: Immigration Act 1971 s 28FA(1), (2) (ss 28FA, 28FB added by the Nationality, Immigration and Asylum Act 2002 s 154). A constable or officer carrying out such a search may seize and retain employee records, other than items subject to legal privilege, which he reasonably suspects will be of substantial value (whether on their own or together with other material) in the investigation of an immigration employment offence, or an offence under the Immigration and Asylum Act 1999 ss 105, 106 (support for asylum-seeker: fraud) (see PARA 254): 1971 Act s 28FA(3). The power to search under s 28FA(2) may be exercised only (a) to the extent that it is reasonably required for the purpose of discovering employee records other than items subject to legal privilege; (b) if the constable or immigration officer produces identification showing his status; and (c) if the constable or immigration officer reasonably believes that at least one of the following conditions applies: (i) that it is not practicable to communicate with a person entitled to grant access to the records; (ii) that permission to search has been refused; (iii) that permission to search would be refused if requested; and (iv) that the purpose of a search may be frustrated or seriously prejudiced if it is not carried out in reliance on s 28FA(2): s 28FA(4), (5). Head (b) applies whether or not a constable or immigration officer is asked to produce identification, but only where premises are occupied: s 28FA(6). For the meaning of 'business premises' for these purposes see PARA 206. 'Immigration employment offence' means an offence under the Immigration, Asylum and Nationality Act 2006 s 21 (see PARA 200A.6): 1971 Act s 28FA(7) (s 28FA as so added; and amended by UK Borders Act 2007 s 28). 'Employee records' means records which show an employee's name, date of birth, address, length of service, rate of pay, or nationality or citizenship: 1971 Act s 28L(3) (added by the 2002 Act s 155).

A justice of the peace may issue a warrant authorising an immigration officer to enter and search premises, where, on an application made by an immigration officer in respect of business premises, the justice of the peace is satisfied that there are reasonable grounds for believing that an employer has provided inaccurate or incomplete information under the 2002 Act s 134, that employee records, other than items subject to legal privilege, will be found on the premises and will enable deduction of some or all of the information which the employer was required to provide, and that at least one of the following conditions is satisfied: (A) that it is not practicable to communicate with a person entitled to grant access to the premises; (B) that it is not practicable to communicate with a person entitled to grant access to the records; (C) that entry to the premises or access to the records will not be granted unless a warrant is produced; and (D) that the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry: 1971 Act s 28FB(1)-(3). An immigration officer searching premises under a warrant issued under this provision may seize and retain employee records, other than items subject to legal privilege, which he reasonably suspects will be of substantial value (whether on their own or together with other material) in the investigation of an offence under the 2002 Act s 137 in respect of a requirement under s 134, or an offence under the Immigration and Asylum Act 1999 ss 105, 106: 1971 Act s 28FB(5).

For provision as to seizure of cash see UK Borders Act 2007 s 24; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2165-2171. As to forfeiture of detained property see s 25; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 481. A magistrates' court may, on the application of the Secretary of State or a claimant of property (1) order the delivery of property to the person appearing to the

court to be its owner, or (2) if its owner cannot be ascertained, make any other order about property: UK Borders Act 2007 s 26(2). In s 26 'property' means property which (a) has come into the possession of an immigration officer, or (b) has come into the possession of the Secretary of State in the course of, or in connection with, a function under the Immigration Acts: 2007 Act s 26(1). For the purposes of s 26(1) it is immaterial whether property is acquired as a result of forfeiture or seizure or in any other way: s 26(7). An order does not affect the right of any person to take legal proceedings for the recovery of the property, provided that the proceedings are instituted within the period of six months beginning with the date of the order: s 26(3). An order may be made in respect of property forfeited under s 25, or under the Immigration Act 1971 s 25C (vehicles etc) (see PARA 199), only if (i) the application under the 2007 Act s 26(2) is made within the period of six months beginning with the date of the forfeiture order, and (ii) the applicant (if not the Secretary of State) satisfies the court that the applicant did not consent to the offender's possession of the property, or that the applicant did not know and had no reason to suspect that the property was likely to be used, or was intended to be used, in connection with an offence: s 26(4). The Secretary of State may make regulations for the disposal of property (A) where the owner has not been ascertained, (B) where an order under s 26(2) cannot be made because of head (i), or (C) where a court has declined to make an order under s 26(2) on the grounds that the court is not satisfied of the matters specified in head (ii): s 26(5), (6). See Immigration (Disposal of Property) Regulations 2008, SI 2008/786.

NOTE 1--Offences under the 1971 Act ss 25A, 25B (see PARA 199) and 26A or 26B (see PARA 201) are also 'relevant offences': s 28D(4) (amended by the 2002 Act ss 144(6), 150(3)).

NOTE 3--'Premises' now includes (4) any renewable energy installation: Police and Criminal Evidence Act 1984 s 23 (definition amended by the Energy Act 2004 s 103(2) (a), Sch 23). 'Renewable energy installation' has the same meaning as in Pt 2 Ch 2 (ss 84-104): 1984 Act s 23 (definition added by the 2004 Act s 103(2)(b)).

TEXT AND NOTE 17--Replaced. An immigration officer may now enter and search any premises occupied or controlled by a person arrested for an offence under the 1971 Act ss 25, 25A, 25B (see PARA 199): s 28F(1) (amended by the 2002 Act s 144(7)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(ii) Powers of Search and Arrest in connection with Offences/208. Power to search arrested persons.

208. Power to search arrested persons.

If a person is arrested for an offence¹ at a place other than a police station², an immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others³. An officer searching a person may seize and retain anything he finds, if he has reasonable grounds for believing that that person might use it to cause physical injury to himself or to another person⁴. The officer may search the arrested person for anything which he might use to assist his escape from lawful custody⁵, or anything which might be evidence relating to the offence for which he has been arrested⁶. An officer searching a person may seize and retain anything he finds, if he has reasonable grounds for believing that that person might use it to assist his escape from lawful custody, or that it is evidence which relates to the offence in question⁷. The power to search may be exercised only if the officer has reasonable grounds for believing that the arrested person may

have concealed on him anything which he might use to assist his escape from lawful custody or anything which might be evidence relating to the offence and only to the extent that it is reasonably required for the purpose of discovering any such thing⁸.

Where a person has been arrested for an offence⁹, and is in custody at a police station or in police detention¹⁰ at a place other than a police station¹¹, an immigration officer may, at any time, search the arrested person in order to see whether he has with him anything: (1) which he might use to cause physical injury to himself or others, damage property, interfere with evidence or assist his escape¹²; or (2) which the officer has reasonable grounds for believing is evidence relating to the offence in question¹³. The power may be exercised only to the extent that the custody officer¹⁴ concerned considers it to be necessary for the purpose of discovering any such items¹⁵. An officer searching a person may seize anything he finds, if he has reasonable grounds for believing that that person might use it for one or more of the purposes mentioned in head (1) above¹⁶, or it is evidence relating to the offence in question¹⁷. The person from whom something is seized must be told the reason for the seizure unless he is violent or appears likely to become violent, or incapable of understanding what is said to him¹⁸.

Where a person is arrested¹⁹, an immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others²⁰. An officer searching a person may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to another person²¹. The officer may search the arrested person for: (a) anything which he might use to assist his escape from lawful custody²²; or (b) any document which might establish his identity, nationality or citizenship, or indicate the place from which he has travelled to the United Kingdom²³ or to which he is proposing to go²⁴. This power may be exercised only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in head (a) or head (b) above and only to the extent that it is reasonably required for the purpose of discovering any such thing²⁵. An officer searching a person under head (1) above may seize and retain anything he finds, if he has reasonable grounds for believing that he might use it to assist his escape from lawful custody²⁶, and an officer searching a person under head (2) above may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing that it might be a document falling within head (b) above²⁷.

Where a person has been arrested²⁸ and is in custody at a police station²⁹, an immigration officer may, at any time, search the arrested person in order to ascertain whether he has with him: (i) anything which he might use to cause physical injury to himself or others, damage property, interfere with evidence, or assist his escape³⁰; or (ii) any document which might establish his identity, nationality or citizenship or indicate the place from which he has travelled to the United Kingdom or to which he is proposing to go³¹. This power may be exercised only to the extent that the officer considers it to be necessary for the purpose of discovering anything of a kind mentioned in head (i) or head (ii) above³². An officer searching a person may seize and retain anything he finds, if he has reasonable grounds for believing that that person might use it for one or more of the purposes mentioned in head (i) above or it might be a document falling within head (ii) above³³. However, the officer may not retain anything seized under head (i) above for longer than is necessary in view of the purpose for which the search was carried out or when the person from whom it was seized is no longer in custody or is in the custody of a court but has been released on bail³⁴. The person from whom something is seized must be told the reason for the seizure unless he is violent or appears likely to become violent or incapable of understanding what is said to him³⁵.

1 le under the Immigration Act 1971 Pt III (ss 24-28L) (as amended).

2 Ibid s 28G(1) (s 28G added by the Immigration and Asylum Act 1999 s 134(1)).

3 Ibid s 28G(2) (as added: see note 2 supra). Cf police powers under the Police and Criminal Evidence Act 1984 s 32 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 936. As to powers of entry, search and seizure generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 869 et seq.

4 Immigration Act 1971 s 28G(6) (as added: see note 2 supra).

5 Ibid s 28G(3)(a) (as added: see note 2 supra).

6 Ibid s 28G(3)(b) (s 28G as added: see note 2 supra). The power to search a person under s 28G (as added) does not authorise an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth: s 28G(5) (as so added).

As from a day to be appointed, further provision is made in relation to powers of seizure from the person: see the Criminal Justice and Police Act 2001 s 51, Sch 1 para 78 (not yet in force). At the date at which this volume states the law no such day had been appointed.

7 Immigration Act 1971 s 28G(7) (s 28G as added: see note 2 supra). The evidence which relates to the offence in question referred to in the text does not apply to an item subject to legal privilege: s 28G(8) (as so added).

8 Immigration Act 1971 s 28G(4) (as added: see note 2 supra).

9 Ie under ibid Pt III (ss 24-28L) (as amended).

10 'Police detention' has the same meaning as in the Police and Criminal Evidence Act 1984 s 118(2) (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 939): Immigration Act 1971 s 28H(12)(a) (s 28H added by the Immigration and Asylum Act 1999 s 135(1)).

11 Immigration Act 1971 s 28H(1) (s 28H as added: see note 10 supra). As to the application of s 28H (as added) to Scotland see s 28H(10)(b), (11)(b), (13) (as so added). As to the application of s 28H (as added) to Northern Ireland see s 28H(10)(c), (11)(c), (12)(b) (as so added).

12 Ibid s 28H(2)(a) (s 28H as added: see note 10 supra). Cf police powers under the Police and Criminal Evidence Act 1984 s 54 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 1006.

An intimate search may not be conducted under the Immigration Act 1971 s 28H (as added): Immigration Act 1971 s 28H(8) (as so added). Cf police powers under the Police and Criminal Evidence Act 1984 s 55 (as amended): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 1007.

'Intimate search' means a search which consists of the physical examination of a person's body orifices other than the mouth: Police and Criminal Evidence Act 1984 s 65 (definition added by the Criminal Justice and Public Order Act 1994 s 59(1)) (definition applied by the Immigration Act 1971 s 28H(11)(a) (as so added)). As from a day to be appointed the Police and Criminal Evidence Act 1984 s 65 is renumbered by the Criminal Justice and Police Act 2001 s 80(5). At the date at which this volume states the law no such day had been appointed.

The person carrying out a search under the Immigration Act 1971 s 28H (as added) must be of the same sex as the person searched: s 28H(9) (as so added).

13 Ibid s 28H(2)(b) (as added: see note 10 supra).

14 'Custody officer' has the same meaning as in the Police and Criminal Evidence Act 1984 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 939): Immigration Act 1971 s 28H(10)(a) (as added: see note 10 supra).

15 Ibid s 28H(3) (as added: see note 10 supra).

16 Ibid s 28H(4)(a) (s 28H as added: see note 10 supra). Anything seized under s 28H(4)(a) (as added) may be retained by the police: s 28H(5) (as so added).

17 Ibid s 28H(4)(b) (s 28H as added: see note 10 supra). Anything seized under s 28H(4)(b) (as added) may be retained by an immigration officer: s 28H(6) (as so added).

18 Ibid s 28H(7) (as added: see note 10 supra).

19 Ie under ibid s 4(2), Sch 2 (both as amended).

20 Ibid Sch 2 para 25B(1), (2) (Sch 2 para 25B added by the Immigration and Asylum Act 1999 s 134(2)).

A power conferred by the Immigration Act 1971 Sch 2 para 25B (as added) to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove, but it does authorise the search of a person's mouth: Sch 2 para 25B(5) (as so added).

21 Ibid Sch 2 para 25B(6) (as added: see note 20 supra). Nothing seized under Sch 2 para 25B(6) (as added) or Sch 2 para 25B(7) (as added) (see the text to note 26 infra) may be retained when the person from whom it was seized is no longer in custody, or is in the custody of a court but has been released on bail: Sch 2 para 25B(9) (as so added).

22 Ibid Sch 2 para 25B(3)(a) (as added: see note 20 supra).

23 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

24 Immigration Act 1971 Sch 2 para 25B(3)(b) (as added: see note 20 supra).

25 Ibid Sch 2 para 25B(4) (as added: see note 20 supra).

26 Ibid Sch 2 para 25B(7) (as added: see note 20 supra). See note 21 supra.

27 Ibid Sch 2 para 25B(8) (as added: see note 20 supra).

28 Ie under ibid Sch 2 (as amended).

29 Ibid Sch 2 para 25C(1) (Sch 2 para 25C added by the Immigration and Asylum Act 1999 s 135(2)).

30 Immigration Act 1971 Sch 2 para 25C(2)(a) (as added: see note 29 supra). An intimate search may not be conducted under Sch 2 para 25C (as added): Sch 2 para 25C(7) (as so added). The person carrying out a search under this paragraph must be of the same sex as the person searched: Sch 2 para 25C(8) (as so added).

31 Ibid Sch 2 para 25C(2)(b) (as added: see note 29 supra).

32 Ibid Sch 2 para 25C(3) (as added: see note 29 supra).

33 Ibid Sch 2 para 25C(4) (as added: see note 29 supra).

34 Ibid Sch 2 para 25C(5) (as added: see note 29 supra).

35 Ibid Sch 2 para 25C(6) (as added: see note 29 supra).

UPDATE

206-210 Powers of Search and Arrest in connection with Offences

For provision relating to the search for evidence of nationality see PARA 210A post.

208 Power to search arrested persons

NOTE 6--Day appointed is 1 January 2003: SI 2002/3032.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(ii) Powers of Search and Arrest in connection with Offences/209. Seized material.

209. Seized material.

If a person showing himself to be the occupier of the premises on which seized material¹ was seized, or to have had custody or control of the material immediately before it was seized, asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time². If a relevant person³ asks an

immigration officer for permission to be granted access to seized material, the officer must arrange for him to have access to the material under the supervision of an immigration officer⁴, or of a constable⁵, as the case may be⁶. An immigration officer may photograph or copy, or have photographed or copied, seized material⁷. If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for that person to have access to the material for the purpose of photographing or copying it under the supervision of an immigration officer⁸, or a constable⁹, as the case may be¹⁰, or for the material to be photographed or copied¹¹. There is no duty to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice: (1) the exercise of any functions in connection with which the material was seized¹²; or (2) an investigation which is being conducted under the Immigration Act 1971, or any criminal proceedings which may be brought as a result¹³.

If a person showing himself to be the occupier of the premises on which seized material¹⁴ was seized or to have had custody or control of the material immediately before it was seized, asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time¹⁵. If a relevant person¹⁶ asks an immigration officer for permission to be granted access to seized material, the officer must arrange for that person to have access to the material under the supervision of an immigration officer¹⁷. An immigration officer may photograph or copy, or have photographed or copied, seized material¹⁸. If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for that person to have access to the material under the supervision of an immigration officer for the purpose of photographing or copying it¹⁹ or the material to be photographed or copied²⁰. There is no duty to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice: (a) the exercise of any functions in connection with which the material was seized²¹; or (b) an investigation which is being conducted under the Immigration Act 1971, or any criminal proceedings which may be brought as a result²².

1 'Seized material' means anything seized and retained by an immigration officer, or seized by an immigration officer and retained by the police under the Immigration Act 1971 Pt III (ss 24-28L) (as amended): s 28I(8)(a), (b) (s 28I added by the Immigration and Asylum Act 1999 s 136(1)). As to powers of entry, search and seizure generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 869 et seq.

2 Immigration Act 1971 s 28I(1) (as added: see note 1 supra).

3 'Relevant person' means a person who had custody or control of seized material immediately before it was seized, or someone acting on behalf of such a person: *ibid* s 28I(7) (as added: see note 1 supra).

4 *Ie* under the supervision of an immigration officer in the case of seized material within *ibid* s 28I(8)(a) (as added) (see note 1 supra).

5 *Ie* under the supervision of a constable in the case of seized material within *ibid* s 28I(8)(b) (as added) (see note 1 supra). As to the office of constable see generally POLICE vol 36(1) (2007 Reissue) para 101 et seq.

6 *Ibid* s 28I(2) (as added: see note 1 supra).

7 *Ibid* s 28I(3) (as added: see note 1 supra).

8 See note 4 supra.

9 See note 5 supra.

10 Immigration Act 1971 s 28I(4)(a) (as added: see note 1 supra).

11 *Ibid* s 28I(4)(b) (s 28I as added: see note 1 supra). A photograph or copy made under s 28I(4)(b) (as added) must be supplied within a reasonable time: s 28I(5) (as so added).

12 *Ibid* s 28I(6)(a) (as added: see note 1 supra).

13 *Ibid* s 28I(6)(b) (as added: see note 1 supra).

14 'Seized material' means anything which has been seized and retained under *ibid* s 4(2), Sch 2 (both as amended): Sch 2 para 25D(8) (Sch 2 para 25D added by the Immigration and Asylum Act 1999 s 136(2)).

15 Immigration Act 1971 Sch 2 para 25D(1) (as added: see note 14 *supra*).

16 'Relevant person' means a person who had custody or control of seized material immediately before it was seized or someone acting on behalf of such a person: *ibid* Sch 2 para 25D(7) (as added: see note 14 *supra*).

17 *Ibid* Sch 2 para 25D(2) (as added: see note 14 *supra*).

18 *Ibid* Sch 2 para 25D(3) (as added: see note 14 *supra*).

19 *Ibid* Sch 2 para 25D(4)(a) (as added: see note 14 *supra*).

20 *Ibid* Sch 2 para 25D(4)(b) (as added: see note 14 *supra*). A photograph or copy so made must be supplied within a reasonable time: Sch 2 para 25D(5) (as so added).

21 *Ibid* Sch 2 para 25D(6)(a) (as added: see note 14 *supra*).

22 *Ibid* Sch 2 para 25D(6)(b) (as added: see note 14 *supra*).

UPDATE

206-210 Powers of Search and Arrest in connection with Offences

For provision relating to the search for evidence of nationality see PARA 210A *post*.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(ii) Powers of Search and Arrest in connection with Offences/210. Search warrants.

210. Search warrants.

The entry or search of premises under a warrant¹ is unlawful unless it complies with the following requirements².

If an immigration officer applies for a warrant³, he must: (1) state the ground on which he makes the application and the provision of the Immigration Act 1971 under which the warrant would be issued⁴; (2) specify the premises which it is desired to enter and search⁵; and (3) identify, so far as is practicable, the persons or articles to be sought⁶. The officer must answer on oath any question that the justice of the peace hearing the application asks him⁷.

A warrant must:

- 562 (a) authorise an entry on one occasion only⁸;
- 563 (b) specify (i) the name of the person applying for it⁹; (ii) the date on which it is issued¹⁰; (iii) the premises to be searched¹¹; and (iv) the provision of the Immigration Act 1971 under which it is issued¹²; and
- 564 (c) identify, so far as is practicable, the persons or articles to be sought¹³.

Two copies of a warrant must be made¹⁴ and must be clearly certified as copies¹⁵.

A warrant may be executed by any immigration officer¹⁶. A warrant may authorise persons to accompany the officer executing it¹⁷. Entry and search under a warrant must be within one month from the date of its issue, and at a reasonable hour, unless it appears to the officer executing it that the purpose of a search might be frustrated¹⁸. If the occupier of premises¹⁹

which are to be entered and searched is present at the time when an immigration officer seeks to execute a warrant, the officer must identify himself to the occupier and produce identification showing that he is an immigration officer²⁰, show the occupier the warrant²¹, and supply him with a copy of it²². If the occupier is not present, but some other person who appears to the officer to be in charge of the premises is present, then that other person is deemed to be the occupier²³. If there is no person present who appears to the officer to be in charge of the premises, the officer must leave a copy of the warrant in a prominent place on the premises²⁴.

An officer executing a warrant must make an indorsement on it stating whether the persons or articles sought were found, and whether any articles, other than articles which were sought, were seized²⁵. A warrant which has been executed, or has not been executed within the time authorised for its execution, must be returned to the justices' chief executive²⁶ appointed by the magistrates' court committee²⁷ whose area includes the petty sessions area²⁸ for which the justice acts²⁹.

1 'Warrant' means a warrant to enter and search premises issued to an immigration officer under the Immigration Act 1971 Pt III (ss 24-28L) (as amended) or under s 4(2), Sch 2 para 17(2) (both as amended) (see para 156 ante); s 28J(11) (s 28J added by the Immigration and Asylum Act 1999 s 137); Immigration Act 1971 s 28K(14) (s 28K added by the Immigration and Asylum Act 1999 s 138).

2 Immigration Act 1971 s 28J(1) (as added: see note 1 supra). As to powers of entry, search and seizure generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 869 et seq.

3 An application for a warrant may be made ex parte and supported by an information in writing: see *ibid* s 28J(4) (as added: see note 1 supra). As to informations see MAGISTRATES vol 29(2) (Reissue) para 681 et seq. As from a day to be appointed it is provided that where a form or procedural or other steps are prescribed for a particular kind of application under the Immigration Act 1971 the application must be made in that form and those steps must be taken: s 31A (prospectively added by the Immigration and Asylum Act 1999 s 165, as from a day to be appointed under s 170(4)).

As to the application of these provisions to Scotland see the Immigration Act 1971 s 28J(4), (5) (as added) and s 28K(9)(c), (9)(d), (11), (12) (as added). As to the application of these provisions to Northern Ireland see s 28J(3) (as added) and s 28K(9)(b), (11) (as added).

4 *Ibid* s 28J(2)(a) (as added: see note 1 supra).

5 *Ibid* s 28J(2)(b) (as added: see note 1 supra). As to the power to enter and search premises see para 207 ante.

6 *Ibid* s 28J(2)(c) (as added: see note 1 supra).

7 *Ibid* s 28J(5) (as added: see note 1 supra).

8 *Ibid* s 28J(6) (as added: see note 1 supra).

9 *Ibid* s 28J(7)(a) (as added: see note 1 supra).

10 *Ibid* s 28J(7)(b) (as added: see note 1 supra).

11 *Ibid* s 28J(7)(c) (as added: see note 1 supra).

12 *Ibid* s 28J(7)(d) (as added: see note 1 supra).

13 *Ibid* s 28J(8) (as added: see note 1 supra). A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued: s 28K(7) (as added: see note 1 supra).

14 *Ibid* s 28J(9) (as added: see note 1 supra).

15 *Ibid* s 28J(10) (as added: see note 1 supra).

16 *Ibid* s 28K(1) (as added: see note 1 supra).

17 *Ibid* s 28K(2) (as added: see note 1 supra).

- 18 Ibid s 28K(3) (as added: see note 1 supra).
- 19 For the meaning of 'premises' see para 207 note 3 ante.
- 20 Immigration Act 1971 s 28K(4)(a) (as added: see note 1 supra).
- 21 Ibid s 28K(4)(b) (as added: see note 1 supra).
- 22 Ibid s 28K(4)(c) (as added: see note 1 supra).
- 23 Ibid s 28K(5) (as added: see note 1 supra). That other person referred to in the text is deemed to be the occupier for the purposes of s 28K(4) (as added): see s 28K(5) (as so added).
- 24 Ibid s 28K(6) (as added: see note 1 supra).
- 25 Ibid s 28K(8) (as added: see note 1 supra).
- 26 As to the justices' chief executive see MAGISTRATES vol 29(2) (Reissue) para 624 et seq.
- 27 As to magistrates' courts committees see MAGISTRATES vol 29(2) (Reissue) para 612 et seq.
- 28 As to petty sessions areas see MAGISTRATES vol 29(2) (Reissue) para 591 et seq.
- 29 Immigration Act 1971 s 28K(9)(a) (as added: see note 1 supra). A warrant returned under s 28K(9)(a) (as added) must be retained for 12 months by the justices' chief executive: s 28K(10) (as so added). If during that 12-month period the occupier of the premises to which it relates asks to inspect it, he must be allowed to do so: s 28K(13) (as so added).

UPDATE

206-210 Powers of Search and Arrest in connection with Offences

For provision relating to the search for evidence of nationality see PARA 210A post.

210 Search warrants

NOTE 3--Day now appointed in relation to 1971 Act s 31A: SI 2000/1282, SI 2003/1862. 1971 Act s 31A amended: Nationality, Immigration and Asylum Act 2002 s 121. As to regulations made under the 1971 Act s 31A, see now the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2007, SI 2007/882 (amended by SI 2007/1122).

TEXT AND NOTES 26-28--For 'justices' chief executive ... justice acts' read 'designated officer for the local justice area in which the justice was acting when he issued the warrant': 1971 Act s 28K(9)(a) (substituted by the Courts Act 2003 Sch 8 para 148(2)).

NOTE 29--Reference to justices' chief executive is now to designated officer: 1971 Act s 28K(10) (amended by the 2003 Act Sch 8 para 148(3)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(5) OFFENCES/(ii) Powers of Search and Arrest in connection with Offences/210A. Nationality documents.

210A. Nationality documents.

1. Search for evidence of nationality

The following provisions¹ apply where an individual has been arrested on suspicion of the commission of an offence and an immigration officer or a constable suspects (1) that the individual may not be a British citizen, and (2) that nationality documents² relating to the individual may be found on (a) premises occupied or controlled by the individual, (b) premises on which the individual was arrested, or (c) premises on which the individual was, immediately before being arrested³. The immigration officer or constable may enter and search the premises for the purpose of finding those documents⁴. The power of search may be exercised only with the written authority of a senior officer⁵. The power of search may not be exercised where the individual has been released without being charged with an offence⁶.

1 Ie the UK Borders Act 2007 s 44.

2 In relation to an individual 'nationality document' means a document showing (1) the individual's identity, nationality or citizenship, (2) the place from which the individual travelled to the United Kingdom, or (3) a place to which the individual is proposing to go from the United Kingdom: *ibid* s 44(5).

3 *Ibid* s 44(1).

4 *Ibid* s 44(2).

5 *Ibid* s 44(3). For that purpose (1) 'senior officer' means (a) in relation to an immigration officer, an immigration officer of at least the rank of chief immigration officer, and (b) in relation to a constable, a constable of at least the rank of inspector, and (2) a senior officer who gives authority must arrange for a written record to be made of (i) the grounds for the suspicions in reliance on which the power of search is to be exercised, and (ii) the nature of the documents sought: s 44(3).

6 *Ibid* s 44(4).

2. Search for evidence of nationality: other premises

The following provisions¹ apply where an individual (1) has been arrested on suspicion of the commission of an offence, and (2) has not been released without being charged with an offence². If, on an application made by an immigration officer or a constable, a justice of the peace is satisfied that there are reasonable grounds for believing that (a) the individual may not be a British citizen, (b) nationality documents³ relating to the individual may be found on premises specified in the application, (c) the documents would not be exempt from seizure⁴, and (d) any of the conditions below⁵ applies, the justice of the peace may issue a warrant authorising an immigration officer or constable to enter and search the premises⁶. The conditions are that (i) it is not practicable to communicate with any person entitled to grant entry to the premises; (ii) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the nationality documents; (iii) entry to the premises will not be granted unless a warrant is produced; (iv) the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer or constable arriving at the premises can secure immediate entry⁷.

1 Ie the UK Borders Act 2007 s 45.

2 *Ibid* s 45(1).

3 For the meaning of 'nationality document' see PARA 210A.1.

4 Under the 2007 Act s 46(2) (see PARA 210A.3).

5 Ie the conditions in *ibid* s 45(3).

6 *Ibid* s 45(2).

7 *Ibid* s 45(3).

The Immigration Act 1971 ss 28J, 28K (warrants: application and execution: see PARA 210) apply, with any necessary modifications, to warrants under the 2007 Act s 45: s 45(4).

3. Seizure of nationality documents

An immigration officer or constable searching premises¹ may seize a document which the officer or constable thinks is a nationality document in relation to the arrested individual². An immigration officer or constable may retain a document seized under the above provision while the officer or constable suspects that (1) the individual to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and (2) retention of the document may facilitate the individual's removal³.

1 Under the UK Borders Act 2007 s 44 or 45 (see PARAS 210A.1, 210A.2).

2 Ibid s 46(1). Section 46(1) does not apply to a document which is subject to legal professional privilege: s 46(2).

3 Ibid s 46(3).

The Immigration Act 1971 s 28I (see PARA 209) has effect in relation to a document seized and retained by an immigration officer: 2007 Act s 46(4).

The Police and Criminal Evidence Act 1984 s 21 has effect in relation to a document seized and retained by a constable: 2007 Act s 46(5). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE.

UPDATE

206-210 Powers of Search and Arrest in connection with Offences

For provision relating to the search for evidence of nationality see PARA 210A post.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(i) Introduction/211. Temporary admission and power to release on bail.

(6) TEMPORARY ADMISSION AND BAIL

(i) Introduction

211. Temporary admission and power to release on bail.

Where the Secretary of State¹ or an immigration officer has a power to detain a person², he also has a power to release³. A person may be granted temporary admission to the United Kingdom instead of being detained⁴. There is also a power to release on bail those who have been detained, including persons detained in the interests of national security and suspected international terrorists⁵.

As from a day to be appointed⁶, provision is made under Part III of the Immigration and Asylum Act 1999 for a system of automatic bail hearings at certain points in a person's detention. However, at the date at which this volume states the law, a Nationality, Immigration and Asylum Bill was being considered by Parliament which proposes to repeal those provisions⁷.

Bail may also be granted to persons detained pending an appeal⁸ or pending judicial review or habeas corpus proceedings⁹. There are detailed provisions relating to the procedure to be followed in bail proceedings¹⁰ and powers of arrest after bail has been granted¹¹.

- 1 As to the Secretary of State see para 2 ante.
- 2 As to powers of detention see para 206 et seq ante.
- 3 As to the release of persons in detention see para 212 et seq post.
- 4 See the Immigration Act 1971 s 4, Sch 2 para 21 (as amended); and para 212 post.
- 5 See *ibid* Sch 2 para 22 (as amended); the Special Immigration Appeals Commission Act 1997 s 3, Sch 3; the Anti-terrorism, Crime and Security Act 2001 s 24; and paras 213, 217 post.
- 6 The Immigration and Asylum Act 1999 Pt III (ss 44-55) is to be brought into force by order made by the Secretary of State under s 170(4) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.
- 7 See 637 HL Official Report (5th series), 8 July 2002, written answers col 65; and para 4 ante.
- 8 See the Immigration Act 1971 Sch 2 para 29 (as amended); and para 214 post.
- 9 See para 218 post.
- 10 See paras 216-217 post.
- 11 See paras 213, 215 post.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(ii) Temporary Admission and Bail under the Immigration Act 1971/212. Temporary admission or release of persons liable to detention.

(ii) Temporary Admission and Bail under the Immigration Act 1971

212. Temporary admission or release of persons liable to detention.

A person liable to detention or detained under the authority of an immigration officer pending examination and pending a decision to give or refuse leave to enter¹ may, under the written authority of an immigration officer, be temporarily admitted to the United Kingdom² without being detained or be released from detention, without prejudice to any later exercise of the power to detain him³. So long as a person is at large in the United Kingdom by virtue of the provisions described above, he is subject to such restrictions as to residence, as to his employment or occupation and as to reporting to the police or an immigration officer as may from time to time be notified to him in writing by an immigration officer⁴.

The provisions that may be included in such restrictions as to residence⁵ include provisions of such a description as may be prescribed by regulations made by the Secretary of State⁶, including, among other things, provisions prohibiting residence in one or more particular areas, requiring the person concerned to reside in accommodation provided by the Secretary of State⁷, and prohibiting him from being absent from that accommodation except in accordance with the restrictions imposed on him⁸. The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of persons temporarily admitted to the United Kingdom⁹ or released from detention¹⁰.

Where a person who is at large in the United Kingdom by virtue of a grant of temporary admission or release fails at any time to comply with a restriction requiring him to report to an immigration officer with a view to the conclusion of his examination¹¹, an immigration officer may direct that the person's examination is to be treated as concluded at that time¹². In such

circumstances, there is no requirement for notice giving or refusing him leave¹³ to be given within 24 hours after that time¹⁴.

The grant of temporary admission is quite distinct from the grant of leave to enter¹⁵ and a person who, having been granted temporary admission, absconds falls to be treated as an illegal entrant¹⁶, can be detained¹⁷, and has no right of appeal against refusal of leave to enter the United Kingdom¹⁸.

1 le under the Immigration Act 1971 s 4(2), Sch 2 para 16 (as amended): see para 156 ante.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 Immigration Act 1971 Sch 2 para 21(1). As to detention see para 156 et seq ante. Since the power to grant temporary admission depends on the power to detain, it is unlawful for a person to remain on temporary admission when there is no realistic prospect of his removal, and consideration should have been given to the grant of leave to enter: *R (on the application of Hwez and Khadir) v Secretary of State for the Home Department* [2002] EWHC 1597 (Admin).

4 Immigration Act 1971 Sch 2 para 21(2) (amended by the Immigration Act 1988 s 10, Schedule paras 6, 10(1)). Where a person seeks leave to enter the United Kingdom and:

95 (1) has made a claim for asylum (Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 2(2)(a));

96 (2) has made a claim that it would be contrary to the United Kingdom's obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) for him to be removed from, or required to leave, the United Kingdom (Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 2(2)(b)); or

97 (3) seeks leave to enter the United Kingdom for a purpose not covered by the Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') or otherwise on the grounds that those rules should be departed from in his case (Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 2(3)),

the Secretary of State may give or refuse him leave to enter the United Kingdom (Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 2(1)). In relation to the giving or refusing of leave to enter by the Secretary of State under art 2, the Immigration Act 1971 Sch 2 para 21 (as amended) is to be read as if references to an immigration officer included references to the Secretary of State: Immigration Act 1971 s 3A(7)-(9) (added by the Immigration and Asylum Act 1999 s 1); Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 3. As to the Secretary of State see para 2 ante. As to the offence of failure to comply with such restrictions see para 201 ante. For equivalent provisions in relation to persons released under the authority of the Secretary of State pending deportation, see para 166 text and notes 6-7 ante.

5 le restrictions imposed under the Immigration Act 1971 Sch 2 para 21(2) (as amended).

6 Ibid Sch 2 para 21(2A) (Sch 2 para 21(2A)-(2E) added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 62(1), (2)). As to the Secretary of State see para 2 ante.

7 le under the Immigration and Asylum Act 1999 s 4: see the text and notes 9-10 infra.

8 Immigration Act 1971 Sch 2 para 21(2B) (Sch 2 para 21(2B)-(2E) as added: see note 6 supra). The regulations may provide that a particular description of provision may be imposed only for prescribed purposes: Sch 2 para 21(2C) (as so added). The power to make regulations conferred by Sch 2 para 21 (as amended) is exercisable by statutory instrument and includes a power to make different provision for different cases: Sch 2 para 21(2D) (as so added). No regulations under Sch 2 para 21 (as amended) are to be made unless a draft of the regulations has been laid before parliament and approved by a resolution of each House: Sch 2 para 21(2E) (as so added). At the date at which this volume states the law no such regulations had been made.

9 Immigration and Asylum Act 1999 s 4(a). The text refers to persons temporarily admitted to the United Kingdom under the Immigration Act 1971 Sch 2 para 21 (as amended).

10 Immigration and Asylum Act 1999 s 4(b). The text refers to persons released from detention under the Immigration Act 1971 Sch 2 para 21 (as amended).

11 le under ibid Sch 2 para 2 (as amended) or Sch 2 para 2A (as added): see paras 86, 93 ante.

12 See *ibid* Sch 2 para 21(3), (4)(a) (Sch 2 para 21(3), (4) added by the Asylum and Immigration Act 1996 s 12(1), Sch 2 para 10; and the Immigration Act 1971 Sch 2 para 21(3), (4)(a) amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 62(1), (3), (4), Sch 16).

13 Is the requirement to give notice of leave to enter or of refusal of leave under the Immigration Act 1971 Sch 2 para 6 (as amended): see para 148 ante.

14 *Ibid* Sch 2 para 21(4)(b) (as added: see note 12 supra).

15 A person who is granted temporary admission is deemed not to have entered the United Kingdom within the meaning of *ibid* s 11(1) (as amended): see para 93 ante.

16 For the meaning of 'illegal entrant' see para 151 ante.

17 Is under the Immigration Act 1971 Sch 2 para 17: see para 156 text and note 18 ante.

18 *R v Secretary of State for the Home Department, ex p Taj Mohammed Khan* [1985] Imm AR 104; *R v Secretary of State for the Home Department, ex p Rajinder Kaur* [1987] Imm AR 278, DC; *Bugdaycay v Secretary of State for the Home Department* [1987] AC 514, [1987] 1 All ER 940, [1987] Imm AR 250, HL; *R v Secretary of State for the Home Department, ex p Gurmeet Singh* [1987] Imm AR 489, DC. There may be a right of appeal on grounds of racial discrimination, breach of human rights or to a decision on a claim for asylum: see the Immigration and Asylum Act 1999 s 65 (as amended) and s 69; and paras 179-180 ante.

UPDATE

212 Temporary admission or release of persons liable to detention

TEXT AND NOTES--Where a person makes a claim for asylum at a time when he has leave to enter or remain in the United Kingdom, the Secretary of State or an immigration officer may impose on a person, or the dependant of such a person, any restriction which may be imposed under the Immigration Act 1971 Sch 2 para 21 on a person liable to detention under Sch 2 para 16 (see PARA 156): Nationality, Immigration and Asylum Act 2002 s 71(1), (2). Where a restriction is imposed on a person under s 71(2), the restriction is to be treated for all purposes as a restriction imposed under the 1971 Act Sch 2 para 21, and if the person fails to comply with the restriction he is liable to detention under Sch 2 para 16: 2002 Act s 71(3). A restriction imposed on a person under this provision ceases to have effect if he ceases to be an asylum-seeker or the dependant of an asylum-seeker: s 71(4). For these purposes, 'asylum-seeker' has the same meaning as in s 70 (see PARA 238A); 'claim for asylum' has the same meaning as in s 18; and 'dependant' means a person who appears to the Secretary of State to be making a claim or application in respect of residence in the United Kingdom by virtue of being a dependant of another person: s 71(5). Regulations under s 71(5) may make different provision for different circumstances, must be made by statutory instrument, and are subject to annulment in pursuance of a resolution of either House of Parliament: s 71(6).

A provision which does not confer power to detain a person, but refers, in any terms, to a person who is liable to detention under a provision of the Immigration Acts, is to be taken to include a person if the only reason why he cannot be detained under the provision is that (1) he cannot presently be removed from the United Kingdom, because of a legal impediment connected with the United Kingdom's obligations under an international agreement; (2) practical difficulties are impeding or delaying the making of arrangements for his removal from the United Kingdom; or (3) practical difficulties, or demands on administrative resources, are impeding or delaying the taking of a decision in respect of him: Nationality, Immigration and Asylum Act 2002 s 67(1), (2). This provision is to be treated as always having had effect: s 67(3). For the meaning of 'Immigration Acts' see PARA 83. See also *R (on the application of Khadir) v*

Secretary of State for the Home Department [2005] UKHL 39, [2005] 4 All ER 114, [2005] 3 WLR 1.

TEXT AND NOTE 3--1971 Act Sch 2 para 21(1) amended: Immigration, Asylum and Nationality Act 2006 s 42(4).

NOTE 4--The Secretary of State may make a payment to a person in respect of travelling expenses which the person has incurred, or will incur, for the purpose of complying with a reporting restriction which requires a person to report to the police, an immigration officer or the Secretary of State under the 1971 Act Sch 2 para 21: Nationality, Immigration and Asylum Act 2002 s 69(1)-(3)(a). As to provision for the use of electronic monitoring in relation to the restrictions see PARA 166A.

NOTES 9, 10--1999 Act s 4(a), (b) now s 4(1)(a), (b): Nationality, Immigration and Asylum Act 2002 s 49(2).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(ii) Temporary Admission and Bail under the Immigration Act 1971/213. Release on bail of persons detained pending examination or removal.

213. Release on bail of persons detained pending examination or removal.

A person:

- 565 (1) detained pending examination and pending a decision to give or refuse leave to enter¹;
- 566 (2) detained pending completion of examination or a decision on whether to cancel his leave to enter²;
- 567 (3) detained pending the giving of directions³; or
- 568 (4) directions for whose removal from the United Kingdom⁴ are for the time being in force and who is for the time being detained⁵,

may be released on bail⁶ by an immigration officer not below the rank of chief immigration officer or an adjudicator, on his entering into a recognisance providing for his appearance before an immigration officer at a time and place named in the recognisance or at such other time and place as may in the meantime be notified to him in writing by an immigration officer⁷. A person detained under head (1) above may not be released on bail unless seven days have elapsed since the date of his arrival in the United Kingdom⁸. Any recognisance may be with or without sureties as determined by the immigration officer or adjudicator⁹ and the conditions of the recognisance may include such conditions as appear to the immigration officer or adjudicator to be likely to result in the appearance of the person bailed at the required time and place¹⁰. Instead of taking bail, the adjudicator or immigration officer may fix the amount and conditions of the bail (including the amount in which any sureties are to be bound) with a view to its being taken subsequently by any such person as the adjudicator may specify¹¹. Once the recognisance is taken, the person to be bailed must be released¹².

Where a recognisance entered into under the provisions described above¹³ appears to an adjudicator to be forfeited, the adjudicator may by order declare it to be forfeited and adjudge the persons bound, whether as principal or sureties, or any of them, to pay the sum in which they are respectively bound or such part of it, if any, as the adjudicator thinks fit¹⁴.

An immigration officer or constable may arrest without warrant a person who has been released on bail¹⁵:

- 569 (a) if he has reasonable grounds for believing that that person is likely to break the condition of his recognisance that he will appear at the time and place required or to break any other condition of it, or has reasonable grounds to suspect that that person is breaking or has broken any such other condition¹⁶; or
- 570 (b) if, a recognisance with sureties having been taken, he is notified in writing by any sureties of the surety's belief that that person is likely to break the first-mentioned condition, and of the surety's wish for that reason to be relieved of his obligation as a surety¹⁷.

A person so arrested: (i) if not required by a condition on which he was released to appear before an immigration officer within 24 hours after the time of his arrest, must as soon as practicable be brought before an adjudicator or, if that is not practicable within those 24 hours, before a justice of the peace acting for the petty sessions area in which he is arrested¹⁸; and (ii) if required by such a condition to appear within those 24 hours before an immigration officer, must be brought before that officer¹⁹. The adjudicator or justice of the peace before whom a person is brought under head (i) above may either direct that he be detained under the authority of the person by whom he was arrested, or release him, on his original recognisance or on a new recognisance, with or without sureties, if of the opinion that that person has broken or is likely to break any condition on which he was released²⁰. If he is not of that opinion he may release him on his original recognisance²¹.

Where a person is detained in the interests of national security²², he may be released on bail by the Special Immigration Appeals Commission²³. A suspected international terrorist who is detained under the Immigration Act 1971 may also be released on bail²⁴ by the Special Immigration Appeals Commission²⁵.

1 Immigration Act 1971 s 4(2), Sch 2 para 22(1)(a) (s 4(2) amended by the British Nationality Act 1981 s 39(2), Sch 4 para 2; and the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 9(1), Sch 6 Pt I; and the Immigration Act 1971 Sch 2 para 22(1) substituted by the Asylum and Immigration Act 1996 s 12(1), Sch 2 para 11(1)). The text refers to a person detained under the Immigration Act 1971 Sch 2 para 16(1) pending examination: see para 156 ante.

The power to make rules of procedure under s 22 includes power to make rules with respect to applications to an adjudicator under Sch 2 paras 22-24: see Sch 2 para 25. As to the rules made under these provisions see the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333 (as amended).

2 Ibid Sch 2 para 22(1)(aa) (Sch 2 para 22(1) as substituted (see note 1 supra); and Sch 2 para 22(1)(aa) added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 63). The text refers to a person detained under the Immigration Act 1971 Sch 2 para 16(1A) (as added): see para 156 ante.

3 Ibid Sch 2 para 22(1)(b) (as substituted: see note 1 supra). The text refers to a person detained under Sch 2 para 16(2) (as substituted): see para 156 ante.

4 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

5 See the Immigration Act 1971 Sch 2 para 34(1) (Sch 2 para 34 added by the Asylum and Immigration Act 1996 s 12(1), Sch 12 para 12; and amended by the Immigration and Asylum Act 1999 Sch 14 paras 43, 67). The text refers to a person detained under the Immigration Act 1971 Sch 2 Pt I (as amended).

The provisions of Sch 2 para 22 (as amended) apply in relation to a person under head (4) in the text as they apply in relation to a person detained under Sch 2 para 16(1) (see para 156 ante) pending examination, detained under Sch 2 para 16(1A) (as added) pending completion of his examination or a decision on whether to cancel his leave to enter or detained under Sch 2 para 16(2) (as substituted) pending the giving of directions: Sch 2 para 34(1) (as so added). The provisions of Sch 2 paras 23-25 (as amended) apply as if any reference to Sch 2 para 22 (as amended) included a reference to Sch 2 para 22 (as amended) as it applies by virtue of Sch 2 para 34(2) (as added): Sch 2 para 34(2) (as so added).

6 Ibid Sch 2 para 22(1). The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of persons released on bail from detention under any provision of the Immigration Act 1971;

the Immigration Act 1988; the Asylum and Immigration Appeals Act 1993; the Asylum and Immigration Act 1996; and the Immigration and Asylum Act 1999: ss 4(c), 167(1).

As from a day to be appointed the Immigration Act 1971 Sch 2 paras 22-25 (as amended) apply to a person detained under Sch 3 para 2 (as amended and prospectively amended) (see para 166 ante) as they apply to a person detained under Sch 2 para 16 (as amended) (see para 156 ante): see Sch 3 para 2(4A) (prospectively added); and para 166 ante. The Immigration and Asylum Act 1999 ss 44-55 make further provision in relation to bail, but at the date at which this volume states the law these provisions had not yet been brought into force.

7 Immigration Act 1971 Sch 2 para 22(1A) (Sch 2 para 22(1A), (1B) added by the Asylum and Immigration Act 1996 Sch 2 para 11). As to the application of the Immigration Act 1971 Sch 2 para 22 (as amended) to Scotland see Sch 2 para 22(1A) (as added), Sch 2 para 22(2), (3) (as amended).

8 Immigration Act 1971 Sch 2 para 22(1B) (as added: see note 7 supra).

9 As to the requirement for sureties see *Re Minteh's Application* (8 March 1996) Lexis, Enggen Library, Cases File, CA.

10 Immigration Act 1971 Sch 2 para 22(2) (amended by the Asylum and Immigration Act 1996 Sch 2 para 11(2)).

11 See the Immigration Act 1971 Sch 2 para 22(3) (amended by the Asylum and Immigration Act 1996 Sch 2 para 11(2)). There is no tariff for the sum required by way of surety, and an adjudicator is not obliged to give reasons for the refusal of bail or for the terms on which bail is granted: *R v Special Adjudicator, ex p Shamamba* [1994] Imm AR 502. Once information becomes available that turns an application for release on bail into one likely to succeed, an urgent re-appraisal of the case is necessary; continued detention against the weight of all available evidence is unlawful: *R v Special Adjudicator and Secretary of State for the Home Department, ex p B* [1998] Imm AR 182, CA.

12 See the Immigration Act 1971 Sch 2 para 22(3) (as amended: see note 11 supra).

13 *Ie* under *ibid* Sch 2 para 22 (as amended).

14 *Ibid* Sch 2 para 23(1). The order must specify a magistrates' court: Sch 2 para 23(1). The recognisance is to be treated for the purposes of collection, enforcement and remission of the sum forfeited as having been forfeited by the court so specified (Sch 2 para 23(1)(a)) and the adjudicator must, as soon as practicable, give particulars of the recognisance to the proper officer of that court (Sch 2 para 23(1)(b) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 para 70(1), (2))). For these purposes, 'proper officer', in relation to a magistrates' court, means the justices' chief executive for the court: Immigration Act 1971 Sch 2 para 23(1A)(a) (added by the Access to Justice Act 1999 Sch 13 para 70(1), (3)). As to the justices' chief executive see MAGISTRATES vol 29(2) (Reissue) para 624 et seq.

Any sum the payment of which is enforceable by a magistrates' court by virtue of the Immigration Act 1971 Sch 2 para 23 (as amended) is to be treated for the purposes of the Justices of the Peace Act 1997 and, in particular, s 60 (as amended) (see MAGISTRATES vol 29(2) (Reissue) para 881), as being due under a recognisance forfeited by such a court: Immigration Act 1971 Sch 2 para 23(3) (amended by the Criminal Justice Act 1972 ss 64(2), 66(7), Sch 6 Pt II; and the Justices of the Peace Act 1997 s 73(2), Sch 5 para 10). See also the Magistrates' Courts Act 1980 Pt III (ss 75-96A) (as amended) and s 120 (as amended), which apply to satisfaction, enforcement and remission of recognisances as to fines adjudged to be paid on conviction in the magistrates' courts; and MAGISTRATES. As to the enforcement of orders generally see MAGISTRATES vol 29(2) (Reissue) para 828 et seq.

As to the application of the Immigration Act 1971 Sch 2 para 23 (as amended) to Scotland see Sch 2 para 23(2). As to the application of Sch 2 para 23 (as amended) to Northern Ireland see Sch 2 para 23(1) (as amended), Sch 2 para 23(1A)(b) (as added) and Sch 2 para 23(4).

15 *Ie* by virtue of *ibid* Sch 2 para 22 (as amended): see the text and notes 1-12 supra. As to the office of constable see generally POLICE vol 36(1) (2007 Reissue) para 101 et seq.

16 *Ibid* Sch 2 para 24(1)(a).

17 *Ibid* Sch 2 para 24(1)(b). Schedule 2 para 17(2) (as amended) (see para 156 ante) applies for the arrest of a person under Sch 2 para 24 as it applies for the arrest of a person under Sch 2 para 17 (as amended): Sch 2 para 24(1). The power of arrest without warrant is specifically preserved by the Police and Criminal Evidence Act 1984 s 26(2), Sch 2: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 927.

18 Immigration Act 1971 Sch 2 para 24(2)(a). As to the application of Sch 2 para 24 to Scotland see Sch 2 para 24(2), (3).

- 19 Ibid Sch 2 para 24(2)(b). As to petty sessions areas see MAGISTRATES vol 29(2) (Reissue) para 591 et seq. As to proceedings in magistrates' courts generally see MAGISTRATES vol 29(2) (Reissue) para 653 et seq.
- 20 Ibid Sch 2 para 24(3)(a).
- 21 Ibid Sch 2 para 24(3)(b).
- 22 See the Special Immigration Appeals Commission Act 1997 s 3(2); and para 217 post.
- 23 The provisions of the Immigration Act 1971 Sch 2 (as amended) apply with modifications: see the Special Immigration Appeals Commission Act 1997 s 3(1), Sch 3. As to the Special Immigration Appeals Commission see para 189 et seq ante.
- 24 Anti-terrorism, Crime and Security Act 2001 s 24(1). Rules of procedure under the Special Immigration Appeals Commission Act 1997: (1) may make provision in relation to release on bail by virtue of the Anti-terrorism, Crime and Security Act 2001 s 24; and (2) subject to provision made by virtue of head (1) supra, apply in relation to release on bail by virtue of s 24 as they apply in relation to release on bail by virtue of the Special Immigration Appeals Commission Act 1997 subject to any modification which the Commission considers necessary: Anti-terrorism, Crime and Security Act 2001 s 24(3). As to the prevention of terrorism generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 383 et seq.
- 25 The provisions of the Immigration Act 1971 Sch 2 para 22(1A) (as added), Sch 2 para 22(2), (3) (as amended) (release) (see the text and notes 1-12 supra), Sch 2 para 23 (as amended) (forfeiture) (see the text and notes 13-14 supra), Sch 2 para 24 (arrest) (see the text and notes 15-21 supra) and Sch 2 para 30(1) (requirement of Secretary of State's consent) (see para 214 post) apply with modifications: see the Anti-terrorism, Crime and Security Act 2001 s 24(2); and the Special Immigration Appeals Commission Act 1997 s 3(1), Sch 3. As to bail before the Special Immigration Appeals Commission see para 217 post.

UPDATE

213 Release on bail of persons detained pending examination or removal

TEXT AND NOTES--Where an immigration officer not below the rank of chief immigration officer has sole or shared power to release a person on bail in accordance with the Immigration Act 1971 Sch 2 (including a provision of that Schedule applied by a provision of that Act or by another enactment), or the Asylum and Immigration Appeals Act 1993 s 9A (repealed), then, in respect of an application for release on bail which is instituted after the expiry of the period of eight days beginning with the day on which detention commences, the power to release on bail is exercisable by the Secretary of State (as well as by any person with whom the immigration officer's power is shared), and is not exercisable by an immigration officer, except where he acts on behalf of the Secretary of State: Nationality, Immigration and Asylum Act 2002 s 68 (1), (2). In relation to the exercise by the Secretary of State of a power to release a person on bail, a reference to an immigration officer is to be construed as a reference to the Secretary of State: s 68(3).

NOTE 1--For 'under s 22' read 'under the 2002 Act s 106 (appeals)': 1971 Act Sch 2 para 25 (amended by the 2002 Act Sch 7 para 5).

NOTE 6--1999 Act s 4(c) now s 4(1)(c): 2002 Act s 49(2).

NOTE 14--In definition of 'proper officer' reference to the justices' chief executive is now to the designated officer: 1971 Act Sch 2 para 23(1A)(a) (amended by the Courts Act 2003 Sch 8 para 149(2)). Reference to the purposes of the Justices of the Peace Act 1997 and, in particular, s 60 is now to the purposes of the 2003 Act s 38: 1971 Act Sch 2 para 23(3) (amended by the 2003 Act Sch 8 para 149(3)).

TEXT AND NOTES 24, 25--Repealed: Prevention of Terrorism Act 2005 s 16(2)(a).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(ii) Temporary Admission and Bail under the Immigration Act 1971/214. Grant of bail pending appeal.

214. Grant of bail pending appeal.

Where a person ('an appellant') has an appeal pending under the Immigration and Asylum Act 1999¹ and is for the time being detained², he may be released on bail³. An immigration officer not below the rank of chief immigration officer or a police officer not below the rank of inspector may release an appellant on his entering into a recognisance conditioned for his appearance before an adjudicator or the Immigration Appeal Tribunal at a time and place named in the recognisance⁴. An adjudicator may release an appellant on his entering into a recognisance conditioned for his appearance before that or any other adjudicator, or the Tribunal at a time and place named in the recognisance⁵. The conditions of the recognisance may include conditions appearing to the person fixing the bail to be likely to result in the appearance of the appellant at the time and place named; and any recognisance is with or without sureties as that person may determine⁶.

Where an appellant has applied for leave to appeal to the Tribunal, the Tribunal may release him on his entering into a recognisance conditioned for his appearance before the Tribunal at a time and place named in the recognisance, and where: (1) the Tribunal grants leave to an appellant to appeal to the Tribunal; or (2) in a case in which leave to appeal is not required, the appellant has duly given notice of appeal to the Tribunal, the Tribunal must, if the appellant so requests, release him⁷.

However, an adjudicator and the Tribunal are not obliged to release an appellant unless the appellant enters into a proper recognisance, with sufficient and satisfactory sureties if required, or if it appears to the adjudicator or the Tribunal, as the case may be⁸ that: (a) the appellant, having on any previous occasion been released on bail⁹, has failed to comply with the conditions of any recognisance entered into by him on that occasion¹⁰; (b) the appellant is likely to commit an offence unless he is retained in detention¹¹; (c) the release of the appellant is likely to cause danger to public health¹²; (d) the appellant is suffering from mental disorder and that his continued detention is necessary in his own interests or for the protection of any other person¹³; or (e) the appellant is under the age of 17, arrangements ought to be made for his care in the event of his release and no satisfactory arrangements for that purpose have been made¹⁴. An appellant must not be released on bail¹⁵ without the consent of the Secretary of State¹⁶ if directions for his removal from the United Kingdom¹⁷ are for the time being in force, or the power to give such directions is for the time being exercisable¹⁸.

Where¹⁹ a recognisance is entered into conditioned for the appearance of an appellant before an adjudicator or the Tribunal, and it appears to the adjudicator or the Tribunal, as the case may be, to be forfeited, the adjudicator or Tribunal may by order declare it to be forfeited and adjudge the persons bound by it, whether as principal or sureties, or any of them, to pay the sum in which they are respectively bound or such part of it, if any, as the adjudicator or Tribunal thinks fit²⁰.

Where a person has an appeal under Part IV of the Immigration and Asylum Act 1999²¹ which is pending by reason of an appeal, or an application for leave to appeal and is for the time being detained under Part I of Schedule 2, he may be released on bail²² by an immigration officer not below the rank of chief immigration officer, a police officer not below the rank of inspector or an adjudicator on his entering into a recognisance conditioned for his appearance before the appropriate appeal court²³ at a time and place named in the recognisance²⁴. The Tribunal may release an appellant on his entering into a recognisance conditioned for his appearance before the appropriate appeal court at a time and place named in the recognisance²⁵.

A person detained in the interests of national security who has an appeal pending may seek bail from the Special Immigration Appeals Commission²⁶.

1 le under the Immigration and Asylum Act 1999 s 59 (see para 174 ante), s 65 (as amended) (see para 179 ante), s 66 (see para 177 ante), s 67 (see para 178 ante), s 69(1) (see para 180 ante), s 69(5) (see para 180 ante) or s 71 (see para 181 ante).

2 le under the Immigration Act 1971 Sch 2 Pt I (as amended).

3 Ibid s 4(2), Sch 2 para 29(1) (s 4(2) amended by the British Nationality Act 1981 s 39(2), Sch 4 para 2; and the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, art 9(1), Sch 6 Pt I; and the Immigration Act 1971 Sch 2 para 29(1) amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 43, 66).

The Immigration Act 1971 Sch 2 Pt II, so far as it relates to appeals under the Immigration and Asylum Act 1999 s 66 (see para 177 ante) or s 67 (see para 178 ante), applies for purposes of the Immigration Act 1971 s 5, Sch 3 (both as amended) (see para 166 et seq ante) as if the references in para 29(1) (as amended) were references to Sch 3 (as amended); and the provisions of Sch 2 paras 29-33 (as amended) apply in like manner in relation to appeals under the Immigration and Asylum Act 1999 s 63(1)(a) (see para 176 ante) or s 69(4)(a) (see para 180 ante): Immigration Act 1971 Sch 3 para 3 (amended by the Immigration and Asylum Act 1999 s 169, Sch 14 paras 43, 69, Sch 16).

Whether a person is lawfully detained under the Immigration Act 1971 Sch 2 (as amended) is a wholly different issue from the question whether detention under Sch 2 (as amended) is justified at all: *Re Yousseff* (12 March 1999) Lexis, Enggen Library, Cases File.

4 Immigration Act 1971 Sch 2 para 29(2).

5 Ibid Sch 2 para 29(3). Where an adjudicator dismisses an appeal, but grants leave to appeal to the appellant to appeal to the Appeal Tribunal, or, in a case in which leave to appeal is not required, the appellant has duly given notice of appeal to the Tribunal, the adjudicator must, if the appellant so requests, exercise his powers under Sch 2 para 29(3): Sch 2 para 29(3). As to bail procedure see the Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 34; and para 216 post.

6 Immigration Act 1971 Sch 2 para 29(5). See also *Re Minteh's Application* (8 March 1996) Lexis, Enggen Library, Cases File, CA.

7 Immigration Act 1971 Sch 2 para 29(4). Where an adjudicator or the Tribunal has power or is required by Sch 2 para 29(6) to release an appellant on bail, the adjudicator or Tribunal may, instead of taking the bail, fix the amount and conditions of the bail (including the amount in which any sureties are to be bound) with a view to its being taken subsequently by any such person as may be specified by them and on the recognisance being so taken, the appellant must be released: Sch 2 para 29(6).

8 Ibid Sch 2 para 30(2). As to the application of Sch 2 para 30 to Scotland see Sch 2 para 30(2).

9 le whether under ibid Sch 2 para 24 (see para 213 ante) or under any other provision: see Sch 2 para 30(2).

10 Ibid Sch 2 para 30(2)(a).

11 Ibid Sch 2 para 30(2)(b).

12 Ibid Sch 2 para 30(2)(c). As to the law relating to public health generally see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH.

13 Ibid Sch 2 para 30(2)(d).

14 Ibid Sch 2 para 30(2)(e).

15 le released under ibid Sch 2 para 29 (as amended).

16 As to the Secretary of State see para 2 ante.

17 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

18 Immigration Act 1971 Sch 2 para 30(1). As to modifications to Sch 2 para 30(1) in relation to suspected international terrorists see para 213 note 25 ante. As to the prevention of terrorism generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 383 et seq.

The consent of the Secretary of State is not required when removal directions are of no effect because an appeal is pending: *R v Immigration Appeal Tribunal, ex p Alghali* [1984] Imm AR 106.

19 Ie under the Immigration Act 1971 Sch 2 para 29 (as amended).

20 Ibid Sch 2 para 31(1). An order under Sch 2 para 31 (as amended) must specify a magistrates' court; and the recognisance must be treated for the purposes of collection, enforcement and remission of the sum forfeited as having been forfeited by the court so specified: Sch 2 para 31(2). Where an adjudicator or the Tribunal makes an order under Sch 2 para 31 (as amended) the adjudicator or Tribunal must, as soon as practicable, give particulars of the recognisance to the proper officer of the court specified in the order: Sch 2 para 31(3) (amended by the Access to Justice Act 1999 s 90(1), Sch 13 para 70(1), (4)). For these purposes, 'proper officer' in relation to a magistrates' court means the justices' chief executive for the court: Immigration Act 1971 Sch 2 para 31(3A)(a) (added by the Access to Justice Act 1999 Sch 13 para 70(1), (5)). As to the justices' chief executive see MAGISTRATES vol 29(2) (Reissue) para 624 et seq.

Any sum the payment of which is enforceable by a magistrates' court by virtue of the Immigration Act 1971 Sch 2 para 31 (as amended) must be treated for the purposes of the Justices of the Peace Act 1997 and, in particular, s 60 (as amended) (see MAGISTRATES vol 29(2) (Reissue) para 881), as being due under a recognisance forfeited by such a court: Immigration Act 1971 Sch 2 para 31(4) (amended by the Criminal Justice Act 1972 s 64(2), Sch 6 Pt II; and the Justices of the Peace Act 1997 s 73(2), Sch 5 para 10). As to the application of the Immigration Act 1971 Sch 2 para 31 (as amended) to Northern Ireland see Sch 2 para 31(1), (2), (3A)(b), (5) (Sch 2 para 31(3A)(b) as added). As to the forfeiture of bail in Scotland see Sch 2 para 32.

21 Ie under the Immigration and Asylum Act 1999 Pt IV (ss 56-81) (as amended): see para 173 et seq ante.

22 Asylum and Immigration Appeals Act 1993 s 9A(1) (s 9A added by the Asylum and Immigration Act 1996 s 12(2), Sch 3 para 3; and the Asylum and Immigration Appeals Act 1993 s 9A(1) amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 99, 105).

The provisions of the Immigration Act 1971 Sch 2 para 29(5), (6) (see the text and notes 6-7 supra) apply for the purposes of the Asylum and Immigration Appeals Act 1993 s 9A (as added and amended) as they apply for the purposes of the Immigration Act 1971 Sch 2 para 29 (as amended): Asylum and Immigration Appeals Act 1993 s 9A(4).

23 For these purposes, the 'appropriate appeal court' means the Court of Appeal: Immigration and Asylum Act 1999 s 58(4), Sch 4 para 23(3) (definition applied by the Asylum and Immigration Appeals Act 1993 s 9A(6) (s 9A as added (see note 22 supra); and s 9A(6) amended by the Immigration and Asylum Act 1999 Sch 14 paras 99, 106)). As to the Court of Appeal see COURTS vol 10 (Reissue) para 634 et seq.

24 See the Asylum and Immigration Appeals Act 1993 s 9A(2) (as added: see note 22 supra).

25 Ibid s 9A(3) (as added: see note 22 supra). The provisions of the Immigration Act 1971 Sch 2 paras 30-33 (Sch 2 para 31 as amended) apply as if: (1) any reference to Sch 2 para 29 (as amended) included a reference to the Asylum and Immigration Appeals Act 1993 s 9A (as added and amended); (2) the reference in the Immigration Act 1971 Sch 2 para 30(2) to Sch 2 para 29(3) or Sch 2 para 29(4) included a reference to the Asylum and Immigration Appeals Act 1993 s 9A(3) (as added); and (c) any reference in the Immigration Act 1971 Sch 2 paras 31-33 (Sch 2 para 31 as amended) to the Immigration Appeal Tribunal included a reference to the appropriate appeal court: Asylum and Immigration Appeals Act 1993 s 9A(5).

26 See the Special Immigration Appeals Commission Act 1997 s 3, Sch 3; and para 217 post.

UPDATE

214 Grant of bail pending appeal

NOTES 1-7--The Secretary of State may make a payment to a person in respect of travelling expenses which the person has incurred, or will incur, for the purpose of complying with a reporting restriction which requires a person to report to the police, an immigration officer or the Secretary of State under the 1971 Act Sch 2 para 29: 2002 Act s 69(1), (2), (3)(b).

TEXT AND NOTE 1--For 'Immigration and Asylum Act 1999' read 'Nationality, Immigration and Asylum Act 2002 Pt 5 (ss 81-117)': Immigration Act 1971 Sch 2 para 29(1) (amended by the 2002 Act Sch 7 para 6(a)).

NOTE 3--Now, the 1971 Act Sch 2 paras 29-33, so far as they relate to an appeal under the 2002 Act s 82(1) against a decision of the kind referred to in s 82(2)(j) or (k) (decision to make deportation order and refusal to revoke deportation order), apply for the purposes of the 1971 Act Sch 3 as if the reference in Sch 2 para 29(1) to Sch 2 Pt I (paras 1-27C) was a reference to Sch 3: Sch 3 para 3 (substituted by the 2002 Act Sch 7 para 8).

NOTES 4, 7--1971 Act Sch 2 para 29(2), (4) amended: 2002 Act Sch 7 para 6(b).

NOTE 5--For 'Appeal Tribunal' read 'Immigration Appeal Tribunal': 1971 Act Sch 2 para 29(3) (amended by the 2002 Act Sch 7 para 6(b)).

NOTE 20--In definition of 'proper officer' reference to the justices' chief executive is now to the designated officer: 1971 Act Sch 2 para 31(3A)(a) (amended by the Courts Act 2003 Sch 8 para 149(2)). Reference to the purposes of the Justices of the Peace Act 1997 and, in particular, s 60 is now to the purposes of the 2003 Act s 38: 1971 Act Sch 2 para 31(4) (amended by the 2003 Act Sch 8 para 149(3)).

NOTES 21-25--See the 2002 Act s 68; and PARA 213.

TEXT AND NOTES 22-25--1993 Act s 9A repealed: Asylum and Immigration (Treatment of Claimants, etc) Act 2004 Sch 2 para 9, Sch 4.

TEXT AND NOTES 22, 23--Reference to 1999 Act Pt IV is now to the 2002 Act Pt 5 (ss 81-117): 1993 Act s 9A(1) (amended by the Nationality, Immigration and Asylum Act 2002 (Consequential and Incidental Provisions) Order 2003, SI 2003/1016).

NOTE 23--1993 Act s 9A(6) further amended: SI 2003/1016.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(ii) Temporary Admission and Bail under the Immigration Act 1971/215. Power to arrest appellants released on bail.

215. Power to arrest appellants released on bail.

An immigration officer or constable may arrest without warrant a person who has been released pending an appeal¹: (1) if he has reasonable grounds for believing that that person is likely to break the condition of his recognisance that he will appear at the time and place required or to break any other condition of it, or has reasonable ground to suspect that that person is breaking or has broken any such other condition²; or (2) if, a recognisance with sureties having been taken, he is notified in writing by any surety of the surety's belief that that person is likely to break the first-mentioned condition, and of the surety's wish for that reason to be relieved of his obligations as a surety³.

A person so arrested: (a) if not required by a condition on which he was released to appear before an adjudicator or the Immigration Appeal Tribunal within 24 hours after the time of his arrest, must as soon as practicable be brought before an adjudicator or, if that is not practicable within those 24 hours, before a justice of the peace acting for the petty sessions area⁴ in which he is arrested⁵; and (b) if required by such a condition to appear within those 24 hours before an adjudicator or before the Tribunal, must be brought before that adjudicator or before the Tribunal, as the case may be⁶.

An adjudicator or justice of the peace before whom a person is brought by virtue of head (a) above if he is of the opinion that that person has broken or is likely to break any condition on which he was released, may either direct that he be detained under the authority of the person by whom he was arrested or release him on his original recognisance or on a new recognisance, with or without sureties⁷. He must release him on his original recognisance if he is not of that opinion⁸.

Where a person detained in the interests of national security is arrested after being released on bail he must be brought before the Special Immigration Appeals Commission⁹.

- 1 le by virtue of the Immigration Act 1971 s 4(2), Sch 2 Pt II (both as amended): see para 214 ante.
- 2 Ibid Sch 2 para 33(1)(a). The provisions of Sch 2 para 17(2) (as amended) (see para 156 ante) apply for the arrest of a person under Sch 2 para 33 as they apply for the arrest of a person under Sch 2 para 17 (as amended) (see para 156 ante): Sch 2 para 33(1).
- 3 Ibid Sch 2 para 33(1)(b).
- 4 As to petty sessions areas see MAGISTRATES vol 29(2) (Reissue) para 591 et seq.
- 5 Immigration Act 1971 Sch 2 para 33(2)(a).
- 6 Ibid Sch 2 para 33(2)(b).
- 7 Ibid Sch 2 para 33(3)(a).
- 8 Ibid Sch 2 para 33(3)(b).
- 9 See the Special Immigration Appeals Commission Act 1997 s 3, Sch 3; and para 217 post.

UPDATE

215 Power to arrest appellants released on bail

TEXT AND NOTE 4--Petty sessions areas replaced by local justice areas: see MAGISTRATES vol 29(2) (Reissue) PARA 507.

NOTE 5--1971 Sch 2 para 33(2)(a) amended: Courts Act 2003 Sch 8 para 149(4).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(ii) Temporary Admission and Bail under the Immigration Act 1971/216. Bail procedure.

216. Bail procedure.

An application to be released on bail may be made orally or in writing to an immigration officer, a police officer or the adjudicator or Immigration Appeal Tribunal¹. The adjudicator and the Immigration Appeal Tribunal are referred to as the 'appellate authority'².

A written application must contain the following particulars³: (1) the full name of the applicant and his date of birth⁴; (2) the address of the place where the applicant is detained at the time when the application is made⁵; (3) whether an appeal is pending at the time when the application is made⁶; (4) the address where the applicant would reside if his application for bail were to be granted⁷; (5) the amount of the recognisance in which he would agree to be bound⁸; (6) the full names, addresses and occupations of two persons who might act as sureties for the applicant if his application for bail were to be granted, and the amounts of the recognisance in

which those persons might agree to be bound⁹; and (7) the grounds on which the application is made and, where a previous application has been refused, full particulars of any change in circumstances which has occurred since the refusal¹⁰. A written application must be signed by the applicant or by a person authorised by him to act or, in the case of an applicant who is a minor or who is for any reason incapable of acting, by a person acting on his behalf¹¹. The recognisance of an applicant and that of a surety must be on the appropriate prescribed forms¹².

Where the appellate authority directs the release of an applicant on bail and the taking of the recognisance is postponed, it must certify in writing that bail has been granted in respect of the applicant, and must include in the certificate particulars of the conditions to be indorsed on the recognisance with a view to the recognisance being taken subsequently, the amounts in which the applicant and any sureties are to be bound and the date of issue of the certificate¹³.

The person having custody of an applicant must release the applicant: (a) on receipt of a certificate signed by or on behalf of the appellate authority stating that the recognisances of any sureties required have been taken, or on being otherwise satisfied that all such recognisances have been taken¹⁴; and (b) on being satisfied that the applicant has entered into his recognisance¹⁵. Where the appellate authority directs the release of an applicant on bail and does not require the taking of a recognisance from the applicant or a surety, the person having custody of the applicant must release him¹⁶.

1 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 34(1). In an application for bail, an applicant may be represented by any person not prohibited by the Immigration and Asylum Act 1999 s 84 (see para 170 ante): Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, rr 34(2), 35(1)(a). As to the application of r 34 to Scotland see r 34(9).

2 Ibid r 2(1).

3 Ibid r 34(3).

4 Ibid r 34(3)(a).

5 Ibid r 34(3)(b).

6 Ibid r 34(3)(c).

7 Ibid r 34(3)(d).

8 Ibid r 34(3)(e). However, sureties must not be demanded if there is no risk of absconding: *Re Minteh's Application* (8 March 1996) Lexis, Enggen Library, Cases File, CA.

9 Immigration and Asylum Appeals (Procedure) Rules 2000, SI 2000/2333, r 34(3)(f).

10 Ibid r 34(3)(g).

11 Ibid r 34(4).

12 Ibid r 34(5). The 'appropriate prescribed form' means the appropriate form in the Schedule (as amended) and those forms, or similar forms, may be used with any variations that the circumstances may require: r 2(1). For the form for recognisance of applicant see Schedule, Form 4 (as amended). For the form for recognisance of applicant's surety see Schedule, Form 5 (as amended).

13 Ibid r 34(6).

14 Ibid r 34(7)(a).

15 Ibid r 34(7)(b).

16 Ibid r 34(8).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(ii) Temporary Admission and Bail under the Immigration Act 1971/217. Bail procedure before the Special Immigration Appeals Commission.

217. Bail procedure before the Special Immigration Appeals Commission.

Where a person is detained under the Immigration Act 1971 the statutory provisions¹ in relation to bail are modified², if³:

- 571 (1) the Secretary of State⁴ certifies that his detention is necessary in the interests of national security⁵;
- 572 (2) he is detained following a decision to refuse him leave to enter the United Kingdom⁶ on the ground that his exclusion is in the interests of national security⁷; or
- 573 (3) he is detained following a decision to make a deportation order against him on the ground that his deportation is in the interests of national security⁸.

The rules governing procedure for bail hearings before the Special Immigration Appeals Commission are different to those for other bail hearings⁹. An application to the Special Immigration Appeals Commission to be released on bail must be made in writing and must contain the following particulars¹⁰: (a) the full name of the applicant¹¹; (b) the address of the place where, and the reason why, the applicant is detained at the time when the application is made¹²; (c) the date of any notice of appeal which has been given¹³; (d) the address where the applicant would reside if his application for bail were to be granted¹⁴; (e) the amount of the recognisance in which he would agree to be bound¹⁵; (f) the full names, addresses and occupations of two persons who might act as sureties for the applicant if his application for bail were to be granted, and the amounts of the recognisances in which those persons might agree to be bound¹⁶; and (g) the grounds on which the application is made and, where a previous application has been refused, particulars of any change in circumstances which has occurred since that refusal¹⁷. A bail application must be signed by the applicant or by a person duly authorised by him for that purpose or, in the case of an applicant who is a minor or who is for any reason incapable of acting, by any person acting on his behalf¹⁸. The application must be delivered, or sent by post, to the Special Immigration Appeals Commission¹⁹.

Where the Special Immigration Appeals Commission directs the release of an applicant on bail and the taking of the recognisance is postponed²⁰, it must certify in writing that the applicant has been granted bail and must include in the certificate²¹: (i) particulars of the conditions to be indorsed on the recognisance with a view to the recognisance being taken subsequently²²; (ii) the amounts in which the applicant and any sureties are to be bound²³; and (iii) the date of issue of the certificate²⁴. The person having custody of an applicant must release him on receipt of a certificate signed by the Special Immigration Appeals Commission stating that the recognisances of any sureties required have been taken or on being otherwise satisfied that all such recognisances have been taken, and on being satisfied that the applicant has entered into his recognisance²⁵.

1 le the provisions of the Immigration Act 1971 s 4(2), Sch 2 (both as amended).

2 See the Special Immigration Appeals Commission Act 1997 s 3(1). As to the modifications referred to in the text see s 3(1), Sch 3.

3 Ibid s 3(2).

4 As to the Secretary of State see para 2 ante.

5 Special Immigration Appeals Commission Act 1997 s 3(2)(a).

6 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

7 Special Immigration Appeals Commission Act 1997 s 3(2)(b).

8 Ibid s 3(2)(c).

9 See the Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 26 (as amended) and r 27.

Subject to the provisions of r 26 (as amended) and r 27, the Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881 (as amended) apply to: (1) applications for bail by a person who brings an appeal under the Special Immigration Appeals Commission Act 1997 s 2 (as amended) (see para 184 ante); and (2) applications to the Special Immigration Appeals Commission under the Immigration Act 1971 s 4(2), Sch 2 paras 22-24 (Sch 2 paras 22, 23 as amended) (see para 213 ante), with appropriate modifications: Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 26(1).

References in the Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881 (as amended) to the appellant are to be read, in relation to bail applications, as if they were references to the applicant: r 26(2). Rule 8 (as substituted) (time limit for appealing), r 9 (as substituted) (notice of appeal) and r 9A (as added) (additional grounds for appealing) do not apply to bail applications: r 26(3) (substituted by SI 2000/1849).

As to the application of the Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 26 (as amended) to Scotland see r 26(6).

10 Ibid r 26(5).

11 Ibid r 26(5)(a).

12 Ibid r 26(5)(b).

13 Ibid r 26(5)(c).

14 Ibid r 26(5)(d).

15 Ibid r 26(5)(e).

16 Ibid r 26(5)(f).

17 Ibid r 26(5)(g).

18 Ibid r 26(7).

19 Ibid r 26(8).

20 Ie under the Immigration Act 1971 Sch 2 para 22(3) (as amended) (see para 213 ante) or Sch 2 para 29(6) (see para 214 post).

21 Special Immigration Appeals Commission (Procedure) Rules 1998, SI 1998/1881, r 27(1).

22 Ibid r 27(1)(a).

23 Ibid r 27(1)(b).

24 Ibid r 27(1)(c).

25 Ibid r 27(2). As to the application of r 27 to Scotland see r 27(3).

UPDATE

217 Bail procedure before the Special Immigration Appeals Commission

TEXT AND NOTE 1--Or detained under the Nationality, Immigration and Asylum Act 2002: 1997 Act s 3(2) (amended by the Nationality, Immigration and Asylum Act 2002 (Consequential and Incidental Provisions) Order 2003, SI 2003/1016).

TEXT AND NOTES 9-25--SI 1998/1881 (as amended) replaced: Special Immigration Appeals Commission (Procedure) Rules 2003, SI 2003/1034 (amended by SI 2007/1285, SI 2007/3370).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(ii) Temporary Admission and Bail under the Immigration Act 1971/218. Grant of bail pending judicial review or habeas corpus proceedings.

218. Grant of bail pending judicial review or habeas corpus proceedings.

In addition to the statutory provisions relating to bail¹, the High Court may in its inherent jurisdiction grant bail on an application for habeas corpus², or on an application for judicial review³ (whether an application for permission to apply for judicial review or a substantive application)⁴. Previously the court would grant bail only where it is arguable⁵ that the decision to detain involved an error of principle or was perverse or where the Secretary of State did not oppose bail⁶, but recent cases affirm that in some cases the court will decide bail on the merits⁷. The High Court's jurisdiction to grant bail is incidental to other extant proceedings⁸.

If bail is refused by the High Court, a right of appeal lies to the Court of Appeal, which may grant bail. The Court of Appeal may also grant bail where it is itself seized of an application or renewed application for judicial review or has granted such application⁹.

The doctrine of forum non conveniens applies to bail applications¹⁰.

1 See paras 212 et seq ante, 219 et seq post. Where there is a statutory right to apply for bail, it should generally be sought from the appellate authorities: *R v Secretary of State for the Home Department, ex p Kelso* [1998] INLR 603.

2 As to habeas corpus see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 207 et seq.

3 As to judicial review see JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq.

4 *R v Secretary of State for the Home Department, ex p Turkoglu* [1988] QB 398, [1987] 2 All ER 823, [1987] Imm AR 484, CA. Whether a person is lawfully detained is a wholly different issue from the question whether he should be released on bail: *Re Yousseff* (12 March 1999) Lexis, Enggen Library, Cases File. See also *R v Secretary of State for the Home Department, ex p Gedaini* (10 December 1997) Lexis, Enggen Library, Cases File (bail arguably unlawful because person should not have been detained). But where it is alleged that the detention is unlawful, an application for habeas corpus or for judicial review may be made, and bail may be sought pending a full hearing of the application. It is an abuse of the process of the court to apply for judicial review of detention after a habeas corpus application has been dismissed: *Abdul Sheikh v Secretary of State for the Home Department* [2001] INLR 98, CA.

The court may grant bail where the application for leave to move for judicial review is adjourned: *Thamathirampillai v Secretary of State for the Home Department* [1987] Imm AR 47, CA.

5 See eg *R v Secretary of State for the Home Department, ex p Swati* [1986] 1 All ER 717 at 724, [1986] 1 WLR 477 at 485-486, CA.

6 See *R v Secretary of State for the Home Department, ex p Turkoglu* [1988] QB 398, [1987] 2 All ER 823, [1987] Imm AR 484, CA; *Vilvarajah v Secretary of State for the Home Department* [1990] Imm AR 457, CA, and *Re Mohan* (20 December 1988, unreported), CA, applying *Vilvarajah v Secretary of State for the Home Department* supra to illegal entrants; and *R v Governor of Haslar Prison, ex p Egbe* (1991) Times, 4 June, CA (refusal of bail between Divisional Court hearing and appeal to Court of Appeal).

7 The High Court has examined the merits of detention in *R v Secretary of State for the Home Department, ex p Kelso* [1998] INLR 603, although limiting the occasion for such an approach to a situation where statutory bail could have been sought; the Court of Appeal extended this approach to a person awaiting deportation, where no statutory bail was available, in *R (on the application of Doku) v Secretary of State for the Home Department* (30 November 2000, unreported), CA; and in *Sezek v Secretary of State for the Home Department*

[2001] EWCA Civ 795, [2001] Imm AR 657. See also Application 22414/93 *Chahal v United Kingdom* (1996) 23 EHRR 413, ECtHR; Application 19776/92 *Amuur v France* (1996) 22 EHRR 533, ECtHR.

8 The High Court cannot grant bail where the substantive application for judicial review (or the application for leave to move) has been dismissed: *R v Secretary of State for the Home Department, ex p Turkoglu* [1988] QB 398, [1987] 2 All ER 823, [1987] Imm AR 484, CA.

9 *Sezek v Secretary of State for the Home Department* [2001] EWCA Civ 795, [2001] Imm AR 657.

10 *Sokha v Secretary of State for the Home Department* [1992] Imm AR 14, Ct of Sess (no connection with Scotland but more chance of obtaining bail: jurisdiction refused).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(iii) Bail under the Immigration and Asylum Act 1999/219. Bail hearings for detained persons.

(iii) Bail under the Immigration and Asylum Act 1999

219. Bail hearings for detained persons.

The Immigration and Asylum Act 1999 provides that, as from a day to be appointed, the following provisions are to have effect¹. Where a person is detained under the Immigration Act 1971², the Secretary of State³ must arrange a reference to the court⁴ for it to determine whether the detained person should be released on bail⁵. The duty to arrange a reference⁶ does not apply if the detained person: (1) is also detained otherwise than under the Immigration Act 1971⁷; (2) is liable to deportation⁸ as a result of the recommendation of a court⁹; or (3) has given to the Secretary of State, and has not withdrawn, written notice that he does not wish his case to be referred to a court¹⁰.

The Secretary of State must secure that a first reference to the court is made in the case of a reference to the Special Immigration Appeals Commission, in accordance with rules¹¹, and in any other case, no later than the eighth day following that on which the detained person was detained¹². If the detained person remains in detention, the Secretary of State must secure that a second reference to the court is made in the case of a reference to the Commission, in accordance with rules, and in any other case, no later than the thirty-sixth day following that on which the detained person was detained¹³.

The court must determine the matter: (a) in the case of a reference to the Commission, in accordance with rules¹⁴; and (b) in any other case, on a first reference, before the tenth day following that on which the person concerned was detained and on a second reference, before the thirty-eighth day following that on which he was detained¹⁵.

The Secretary of State may, in relation to a particular case or class of case, direct that the hearing of a reference¹⁶ is to be at a place specified in the direction¹⁷. The places that may be specified include, in particular: (i) any place at which a court sits¹⁸; (ii) any place at which appeals under the Immigration and Asylum Act 1999 are heard¹⁹; (iii) detention centres²⁰; (iv) prisons²¹; or (v) any particular premises or rooms within a place of a kind mentioned in heads (i) to (iv) above²².

1 The Immigration and Asylum Act 1999 Pt III (ss 44-55) is to be brought into force as from a day to be appointed by order made by the Secretary of State under s 170(4). At the date at which this volume states the law no such day had been appointed. See further para 211 ante.

2 Ibid s 44(1) (not yet in force).

3 As to the Secretary of State see para 2 ante.

4 'Court' means: (1) if the detained person has brought an appeal under the Immigration Acts, the court or other appellate authority dealing with his appeal; (2) in the case of a detained person to whom the Special Immigration Appeals Commission Act 1997 s 3(2) (see para 217 ante) applies (jurisdiction in relation to bail for persons detained on grounds of national security), the Commission; and (3) in any other case, such magistrates' court as the Secretary of State considers appropriate: Immigration and Asylum Act 1999 s 44(12) (not yet in force). As to appeals see para 173 et seq ante. For the meaning of 'the Immigration Acts' see para 83 ante. As to appellate authorities see para 173 ante. As to magistrates' courts see MAGISTRATES vol 29(2) (Reissue) para 583 et seq. As to the Special Immigration Appeals Commission see para 184 ante.

5 Immigration and Asylum Act 1999 s 44(2) (not yet in force). The court hearing a case referred to it under s 44 (not yet in force) must proceed as if the detained person had made an application to it for bail: s 44(7) (not yet in force).

The Secretary of State may by regulations make provision modifying the application of s 44 (not yet in force) in relation to cases where the proceedings on a reference under s 44 (not yet in force) are adjourned to enable medical or other reports to be obtained or for any other reason: s 44(14) (not yet in force). As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante. The regulations under s 44(14) (not yet in force) may, in particular, provide for the requirement for there to be a second reference not to apply in prescribed circumstances: s 44(15) (not yet in force). The provisions of s 44 (not yet in force) do not affect any other provision under which the detained person may apply for, or be released on, bail: s 44(16).

6 le under ibid s 44 (not yet in force).

7 Ibid s 44(3)(a) (not yet in force).

8 le under the Immigration Act 1971 s 3(6) (as amended): see para 160 ante.

9 Immigration and Asylum Act 1999 s 44(3)(b) (not yet in force).

10 Ibid s 44(3)(c) (not yet in force).

11 Ibid s 44(4)(a) (not yet in force), s 167(1). Rules made by the Lord Chancellor under the Special Immigration Appeals Commission Act 1997 s 5 (as amended) (see para 194 ante) may include provision made for the purposes of the Immigration and Asylum Act 1999 s 44 (not yet in force): s 44(13) (not yet in force). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. The power to make rules under the Immigration and Asylum Act 1999 is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and any such instrument may contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate, may make different provision for different cases or descriptions of case, and may make different provision for different areas: s 166(1), (2).

If it appears to the Secretary of State that there has been a failure to comply with s 44(4) (not yet in force) or s 44(5) (not yet in force), he must refer the matter to the court, and the court must deal with the reference, as soon as is reasonably practicable: s 44(10) (not yet in force).

12 Ibid s 44(4)(b) (not yet in force). See note 11 supra.

13 Ibid s 44(5) (not yet in force). See note 11 supra. A reference under s 44(5) (not yet in force) may not be heard by the court before the thirty-third day following that on which the detained person was detained: s 44(6) (not yet in force).

14 Ibid s 44(8)(a) (not yet in force). Section 44(8) (not yet in force) does not apply if the detained person has been released or has given notice under s 44(3)(c) (not yet in force) (see the text to note 10 supra): s 44(9) (not yet in force).

If it appears to the Secretary of State that there has been a failure to comply with s 44(8) (not yet in force), he must notify the court concerned, and the court must deal with the matter, as soon as is reasonably practicable: s 44(11) (not yet in force).

15 Ibid s 44(8)(b) (not yet in force). See note 14 supra.

16 le under ibid s 44 (not yet in force).

17 Ibid s 45(1), (5) (not yet in force). A direction under s 45(1) (not yet in force) has effect notwithstanding any other direction which may be given as to the place in which the court is to sit, and requires the approval of the Lord Chancellor: s 45(3), (4) (not yet in force).

18 Ibid s 45(2)(a) (not yet in force).

- 19 Ibid s 45(2)(b) (not yet in force).
- 20 Ibid s 45(2)(c) (not yet in force). As to detention centres see para 157 ante.
- 21 Ibid s 45(2)(d) (not yet in force). As to prisons generally see PRISONS.
- 22 Ibid s 45(2)(e) (not yet in force).

UPDATE

219-223 Bail hearings for detained persons ... Procedure

Immigration and Asylum Act 1999 ss 44-52 repealed: Nationality, Immigration and Asylum Act 2002 s 68(6)(a), Sch 9.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(iii) Bail under the Immigration and Asylum Act 1999/220. Granting bail.

220. Granting bail.

The Immigration and Asylum Act 1999 provides that, as from a day to be appointed, the following provisions are to have effect¹. On a reference to the court² for it to determine whether the detained person should be released on bail³, the court must release the detained person on bail unless⁴:

- 574 (1) the court has imposed a requirement⁵ which has not been complied with⁶;
- 575 (2) the court is satisfied that there are substantial grounds for believing that if released on bail he would: (a) fail to comply with one or more of the conditions of bail or of any recognisance⁷; (b) commit an offence while on bail which is punishable with imprisonment⁸; (c) be likely to cause danger to public health⁹; or (d) alone or with others, be a serious threat to the maintenance of public order¹⁰;
- 576 (3) the court is satisfied that: (a) he is or has been knowingly involved with others in a concerted attempt by all or some of them to enter the United Kingdom¹¹ in breach of immigration law¹²; (b) he is suffering from mental disorder and his continued detention is necessary in his own interests or for the protection of any other person¹³; (c) he is under the age of 18 and, while arrangements ought to be made for his care in the event of his release from detention, no satisfactory arrangements have been made¹⁴; (d) he is required to submit to an examination by an immigration officer¹⁵ and there is no relevant decision¹⁶ which the officer is in a position to take¹⁷; or (e) directions for his removal from the United Kingdom are in force¹⁸; or
- 577 (4) the court is satisfied that he is a person detained in the interests of national security¹⁹.

If bail is granted²⁰, the appropriate court²¹ may (i) on an application by or on behalf of the person released, vary any condition on which it was granted²²; or (ii) on an application by or on behalf of the Secretary of State, vary any condition on which it was granted or impose conditions on it²³.

Before releasing a person on bail²⁴, the court may require a recognisance to be entered into or security to be given by the person bailed or on his behalf²⁵. The court may impose a

requirement for the person to enter into a recognisance or give some security²⁶ only if it considers that its imposition is necessary to secure compliance with any of the following conditions to which bail will be subject²⁷.

- 578 (A) Bail granted by the Special Immigration Appeals Commission is subject to a condition requiring the person bailed to appear before it at a specified time and place²⁸.
- 579 (B) Bail granted by a court or other appellate authority (other than the Commission) dealing with an appeal by the person bailed is subject to a condition requiring him to appear before the court or authority at a time and place specified by it, and if the appeal is dismissed, withdrawn or abandoned, to appear before an immigration officer at such time and place as may be notified to him in writing by an immigration officer²⁹.
- 580 (C) In any other case, bail granted is subject to a condition requiring the person bailed to appear before an immigration officer at a time and place specified by the court, or at such other time and place as may be notified to him in writing by an immigration officer³⁰.

Bail granted may be subject to such other conditions as appear to the court to be likely to result in the appearance of the person bailed at the required time and place³¹.

If, on a reference to the court for it to determine whether the detained person should be released on bail³², the court has power to release the detained person on bail but is not required to do so³³: (*aa*) the court may, instead of releasing him fix the amount of any recognisance or security to be taken on his release on bail (including the amount in which any sureties are to be bound) and settle the terms of any conditions to be imposed on his release on bail³⁴; or (*bb*) the person concerned must be released on bail on the recognisance being taken, or the security being given³⁵.

A person released on bail is subject to such restrictions (if any) as to his employment or occupation while he is in the United Kingdom as may from time to time be notified to him in writing by an immigration officer³⁶.

1 The Immigration and Asylum Act 1999 Pt III (ss 44-55) is to be brought into force by order made by the Secretary of State under s 170(4) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. See further para 211 ante. As to the Secretary of State see para 2 ante.

2 For the meaning of 'court' see para 219 note 4 ante.

3 *Ie* under the Immigration and Asylum Act 1999 s 44 (not yet in force): see para 219 ante.

4 *Ibid* s 46(1) (not yet in force).

5 *Ie* under *ibid* s 47(1) (not yet in force): see the text and notes 24-25 *infra*.

6 *Ibid* s 46(1)(b) (not yet in force).

7 *Ibid* s 46(1)(a), (2)(a) (not yet in force). The Secretary of State may by order amend s 46(2) (not yet in force) or s 46(3) (not yet in force) by adding to or restricting the circumstances in which the subsection applies: s 46(8) (not yet in force). At the date at which this volume states the law no such order had been made. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante. No order is to be made under s 46(8) (not yet in force) unless a draft of the order has been laid before Parliament and approved by a resolution of each House (s 166(5)(b)), and accordingly any such statutory instrument is not subject to annulment by a resolution of either House of Parliament (s 166(6)(a)). Note that s 166(5)(b) (as drafted) refers to 'regulations under section 46(8)', but this should clearly be a reference to orders as there is no power to make regulations under s 46.

8 *Ibid* s 46(1)(a), (2)(b) (not yet in force). See note 7 *supra*. For these purposes, the question whether an offence is one which is punishable with imprisonment is to be determined without regard to any enactment prohibiting or restricting the imprisonment of young offenders or first offenders: s 46(5) (not yet in force). As to

young offenders see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) para 1232 et seq; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 10 et seq.

9 Ibid s 46(1)(a), (2)(c) (not yet in force). See note 7 supra.

10 Ibid s 46(1)(a), (2)(d) (not yet in force). See note 7 supra.

11 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

12 Immigration and Asylum Act 1999 s 46(1)(a), (3)(a) (not yet in force). See note 7 supra. 'Immigration law' means any provision of the Immigration Acts or any similar provision in force in any part of the British Islands: s 46(6) (not yet in force). For the meaning of 'the Immigration Acts' see para 83 ante.

13 Ibid s 46(1)(a), (3)(b) (not yet in force). See note 7 supra.

14 Ibid s 46(1)(a), (3)(c) (not yet in force). See note 7 supra.

15 Ie under the Immigration Act 1971 Sch 2 para 2 (as amended) (see para 93 ante) or Sch 2 para 2A (as added) (see para 93 ante).

16 A relevant decision is: (1) a decision as to whether, and if so how, to exercise the powers conferred by ibid Sch 2 para 21 (as amended) (see para 212 ante); (2) a decision as to whether to grant the person concerned leave to enter, or remain in, the United Kingdom; (3) a decision as to whether to cancel his leave to enter the United Kingdom under Sch 2 para 2A(8) (as added) (see para 148 ante): Immigration and Asylum Act 1999 s 46(7) (not yet in force).

17 Ibid s 46(1)(a), (3)(d) (not yet in force). See note 7 supra. This provision may apply in the case of a person who claims asylum on arrival and fails to give his true identity or where there is no suitable release address. Such a person could not be given or refused leave and would not, on the information available, be suitable for the grant of temporary admission: 605 HL Official Report (5th series), 18 October 1999, col 894.

18 Immigration and Asylum Act 1999 s 46(1)(a), (3)(e) (not yet in force). See note 7 supra.

19 Ibid s 46(1)(a), (4) (not yet in force). The text refers to a person to whom the Special Immigration Appeals Commission Act 1997 s 3(2) applies: see para 217 ante.

20 Ie under the Immigration and Asylum Act 1999 s 46 (not yet in force).

21 'Appropriate court' means: (1) if the person released has brought an appeal under the Immigration Acts, the court or other appellate body dealing with his appeal; (2) in any other case, the court which released the person concerned on bail: s 46(11) (not yet in force).

22 Ibid s 46(9) (not yet in force).

23 Ibid s 46(10) (not yet in force).

24 Ie under ibid s 46 (not yet in force).

25 Ibid s 47(1) (not yet in force). A recognisance taken under s 47 (not yet in force) may be with or without sureties, as the court may determine: s 47(7) (not yet in force).

26 Ie under ibid s 47(1) (not yet in force): see the text to notes 24-25 supra.

27 Ibid s 47(2) (not yet in force). The text refers to conditions under s 47(3) (not yet in force), s 47(4) (not yet in force) or s 47(5) (not yet in force).

28 Ibid s 47(3) (not yet in force).

29 Ibid s 47(4) (not yet in force).

30 Ibid s 47(5) (not yet in force).

31 Ibid s 47(6) (not yet in force).

32 Ie under ibid s 44 (not yet in force): see para 219 ante.

33 Ie not required to release the detained person by ibid s 46 (not yet in force).

34 Ibid s 47(8), (9) (not yet in force).

35 Ibid s 47(8), (10) (not yet in force).

36 Ibid s 47(11) (not yet in force). Any restriction imposed on a person under s 47(11) (not yet in force) has effect for the purposes of Pt III (not yet in force) as a condition of his bail: s 47(12) (not yet in force).

UPDATE

219-223 Bail hearings for detained persons ... Procedure

Immigration and Asylum Act 1999 ss 44-52 repealed: Nationality, Immigration and Asylum Act 2002 s 68(6)(a), Sch 9.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(iii) Bail under the Immigration and Asylum Act 1999/221. Forfeiture.

221. Forfeiture.

The Immigration and Asylum Act 1999 provides that, as from a day to be appointed, the following provisions are to have effect¹. If it appears to a court² that a mandatory bail condition³ has been broken, it may by order declare the recognisance to be forfeited and order any person bound by the recognisance (whether as principal or surety) to pay the sum in which he is bound or such part of that sum, if any, as the court thinks fit⁴. If the court which makes such an order is not a magistrates' court, it must: (1) specify a magistrates' court which is, for the purposes of collection, enforcement and remission of the sum forfeited, to be treated as the court which ordered the forfeiture⁵; and (2) as soon as practicable give particulars of the recognisance to the justices' chief executive⁶ appointed by the magistrates' court committee⁷ whose area includes the petty sessions area⁸ for which the specified court acts⁹.

If a court is satisfied that a person ('A') by whom, or on whose behalf, security has been given¹⁰ has broken a mandatory bail condition, it may order the security to be forfeited unless it appears that A had reasonable cause for breaking the condition¹¹. The order may provide for the forfeiture to extend to a specified amount which is less than the value of the security¹². Such an order takes effect, unless previously revoked, at the end of the period of 21 days beginning with the day on which it is made¹³. If a court which has made such an order is satisfied, on an application made by or on behalf of the person who gave the security, that A did after all have reasonable cause for breaking the condition¹⁴, the court may by order remit the forfeiture¹⁵ or provide for it to extend to a specified amount which is less than the value of the security¹⁶. Such an application may be made before or after the order for forfeiture has taken effect¹⁷, but may not be entertained unless the court is satisfied that the Secretary of State was given reasonable notice of the applicant's intention to make the application¹⁸.

1 The Immigration and Asylum Act 1999 Pt III (ss 44-55) is to be brought into force by order made by the Secretary of State under s 170(4) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. See further para 211 ante. As to the Secretary of State see para 2 ante.

2 For the meaning of 'court' see para 219 note 4 ante.

3 'Mandatory bail condition' means a condition: (1) to which bail granted under the Immigration and Asylum Act 1999 s 46 (not yet in force) (see para 220 ante) is subject as a result of s 47(3), s 47(4) or s 47(5) (not yet in force) (see para 220 ante); and (2) in relation to which the court has taken a recognisance, or a person has given a security, under s 47 (not yet in force) (see para 220 ante): ss 48(2), 49(9) (not yet in force).

- 4 Ibid s 48(1) (not yet in force). As to the application of s 48 (not yet in force) to Scotland see s 48(6), (7) (not yet in force). As to the enforcement of orders generally see MAGISTRATES vol 29(2) (Reissue) para 828 et seq.
- 5 Ibid s 48(3)(a) (not yet in force). Any sum collected as a result of s 48(3)(a) (not yet in force) must be paid to the Lord Chancellor: s 48(4) (not yet in force). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. The Lord Chancellor may, with the approval of the Treasury (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517), make regulations as to the times at which and the manner in which accounts for, and payments of, sums collected as a result of head (1) in the text, or sums forfeited as a result of s 49 (not yet in force), must be made and for keeping and auditing of accounts in relation to such sums: ss 48(5), 49(8) (not yet in force). At the date at which this volume states the law no such regulations had been made. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.
- 6 As to the justices' chief executive see MAGISTRATES vol 29(2) (Reissue) para 624 et seq.
- 7 As to magistrates' courts committees see MAGISTRATES vol 29(2) (Reissue) para 612 et seq.
- 8 As to petty sessions areas see MAGISTRATES vol 29(2) (Reissue) para 591 et seq.
- 9 Immigration and Asylum Act 1999 s 48(3)(b) (not yet in force).
- 10 Ie under ibid s 47 (not yet in force): see para 220 ante.
- 11 Ibid s 49(1) (not yet in force). Any sum forfeited as a result of s 49 (not yet in force) must be paid to the Lord Chancellor: s 49(4). See note 5 supra.
- 12 Ibid s 49(2) (not yet in force).
- 13 Ibid s 49(3) (not yet in force).
- 14 Ibid s 49(5) (not yet in force).
- 15 Ibid s 49(6)(a) (not yet in force).
- 16 Ibid s 49(6)(b) (not yet in force).
- 17 Ibid s 49(7)(a) (not yet in force).
- 18 Ibid s 49(7)(b) (not yet in force).

UPDATE

219-223 Bail hearings for detained persons ... Procedure

Immigration and Asylum Act 1999 ss 44-52 repealed: Nationality, Immigration and Asylum Act 2002 s 68(6)(a), Sch 9.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(iii) Bail under the Immigration and Asylum Act 1999/222. Power to arrest persons released on bail.

222. Power to arrest persons released on bail.

The Immigration and Asylum Act 1999 provides that, as from a day to be appointed, the following provisions are to have effect¹. An immigration officer or constable who has reasonable grounds for believing that a person released on a reference² has broken or is likely to break any condition on which he was bailed, may arrest him without a warrant³.

If (1) a third party (that is a person other than the person bailed) has agreed to act as a surety in relation to a recognisance entered into⁴, or has given security on behalf of the person bailed⁵;

and (2) an immigration officer or constable is notified in writing by a third party: (a) of his belief that a person released on a reference is likely to break the condition that he must appear at the time and place required⁶; and (b) of the third party's wish, for that reason, to be relieved of his obligations as a surety or to have the security given returned to him⁷, the officer or constable may arrest the person released without a warrant⁸.

If a justice of the peace is, by written information on oath, satisfied that there are reasonable grounds for suspecting that a person liable to be arrested is to be found on any premises⁹, the justice of the peace may grant a warrant authorising any immigration officer or constable to enter, if need be by reasonable force, the premises named in the warrant for the purpose of searching for and arresting the person concerned¹⁰.

A person arrested must: (i) if required by a condition on which he was released to appear before an immigration officer within 24 hours after his arrest, be brought before an immigration officer within that period¹¹; or (ii) if released by the Special Immigration Appeals Commission¹², be brought before it within 24 hours after his arrest¹³.

If a person has been arrested and neither head (i) nor head (ii) above applies to him, or he has been brought before an immigration officer under head (i) above but has not been released¹⁴, the arrested person must be brought before a justice of the peace acting for the petty sessions area in which he was arrested¹⁵. The arrested person must be brought before the person or court¹⁶ concerned as soon as is practicable after his arrest and in any event within 24 hours after his arrest¹⁷.

1 The Immigration and Asylum Act 1999 Pt III (ss 44-55) is to be brought into force by order made by the Secretary of State under s 170(4) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. See further para 211 ante. As to the Secretary of State see para 2 ante.

2 *Ibid* under *ibid* s 44 (not yet in force): see para 219 ante.

3 *Ibid* s 50(1) (not yet in force). As to the application of s 50 (not yet in force) to Scotland see s 50(4)(b), (5), (9)(b) (not yet in force). As to the application of s 50 (not yet in force) to Northern Ireland see s 50(4)(c), (9)(c), (10)(b) (not yet in force).

4 *Ibid* s 50(2)(a) (not yet in force). The text refers to a recognisance entered into under s 47 (not yet in force): see para 220 ante.

5 *Ibid* s 50(2)(b) (not yet in force). The text refers to security given under s 47 (not yet in force): see para 220 ante.

6 *Ibid* s 50(3)(a) (not yet in force).

7 *Ibid* s 50(3)(b) (not yet in force).

8 *Ibid* s 50(3) (not yet in force).

9 *Ibid* s 50(4)(a) (not yet in force).

10 *Ibid* s 50(5) (not yet in force).

11 *Ibid* s 50(6) (not yet in force).

12 *Ibid* under *ibid* s 46 (not yet in force): see para 220 ante.

13 *Ibid* s 50(7) (not yet in force). In relation to an arrested person dealt with under s 50(7) (not yet in force) or s 50(9) (not yet in force) (see the text to note 15 *infra*) (s 50(11) (not yet in force)): (1) the court or person dealing with the matter may, if of the opinion that the arrested person has broken or is likely to break any condition on which he was released: (a) give a direction that the arrested person be detained under the authority of the person by whom he was arrested; (b) release him on his original bail; or (c) release him on a new recognisance (with or without sureties) or on new bail (s 50(12) (not yet in force)); and (2) if not of that opinion, that court or person must release the arrested person on his original bail (s 50(13) (not yet in force)).

In reckoning any period of 24 hours for the purposes of s 50 (not yet in force), no account is to be taken of Christmas Day, Good Friday or any Sunday: s 50(14) (not yet in force).

14 Ibid s 50(8) (not yet in force).

15 Ibid s 50(9)(a) (not yet in force). See note 13 supra. As to petty sessions areas see MAGISTRATES vol 29(2) (Reissue) para 591 et seq.

16 For the meaning of 'court' see para 219 note 4 ante.

17 Immigration and Asylum Act 1999 s 50(10) (not yet in force).

UPDATE

219-223 Bail hearings for detained persons ... Procedure

Immigration and Asylum Act 1999 ss 44-52 repealed: Nationality, Immigration and Asylum Act 2002 s 68(6)(a), Sch 9.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(iii) Bail under the Immigration and Asylum Act 1999/223. Procedure.

223. Procedure.

The Immigration and Asylum Act 1999 provides that, as from a day to be appointed, the following provisions are to have effect¹. Any rules² made in connection with bail hearings resulting from any provision of, or made under, Part III of the Immigration and Asylum Act 1999³ must include provision requiring the Secretary of State to notify:

- 581 (1) the detained person who is the subject of the hearing of a reference⁴; and
- 582 (2) if the Secretary of State is aware that that person will be represented at the hearing (whether or not by an authorised advocate⁵), the person who will be representing him at the hearing⁶,

of the date, place and time of the hearing as soon as is reasonably practicable after the Secretary of State is given that information by the magistrates' court⁷.

If a person has been refused bail on a reference⁸ or on an application under the Immigration Act 1971, the Asylum and Immigration Appeals Act 1993 or the Special Immigration Appeals Commission Act 1997, he may, on the first subsequent such reference or application, advance any argument as to fact or law⁹. However, on any subsequent such reference or application, the court need not hear any argument as to fact or law that that court has heard previously¹⁰.

A magistrates' court dealing with a reference must sit in open court unless (a) the detained person has made a claim for asylum and the court considers that there are compelling reasons why it should sit in private¹¹; or (b) the court considers that the interests of the administration of justice require it to sit in private¹².

Any proceedings before a magistrates' court under Part III of the Immigration and Asylum Act 1999 may be conducted on behalf of the Secretary of State, by a person authorised by him¹³, or on behalf of the detained person, by a person nominated by him¹⁴, even though that person is not an authorised advocate¹⁵.

On a reference, the court may, after hearing representations from the parties, direct that the detained person is to be treated as being present in the court if he is able (whether by means of a live television link or otherwise) to see and hear the court and to be seen and heard by it¹⁶.

If the detained person wishes to make such representations he must do so by using the facilities that will be used if the court decides to give the proposed direction¹⁷. If, after hearing representations from the parties, the court decides not to give a direction, it must give its reasons for refusing¹⁸. The court may not give a direction unless: (i) it has been notified by the Secretary of State that facilities are available in the relevant institution¹⁹ which will enable the detained person to see and hear the court and to be seen and heard by it²⁰; and (ii) the notice has not been withdrawn²¹.

1 The Immigration and Asylum Act 1999 Pt III (ss 44-55) is to be brought into force by order made by the Secretary of State under s 170(4) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. See further para 211 ante. As to the Secretary of State see para 2 ante.

2 'Rules' means rules made by the Lord Chancellor under the Magistrates' Courts Act 1980 s 144 (as amended) (see MAGISTRATES vol 29(2) (Reissue) para 588); Immigration and Asylum Act 1999 s 51(7) (not yet in force). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.

3 le ibid Pt III (not yet in force).

4 Ibid s 51(1)(a) (not yet in force). The text refers to the hearing of a reference under s 44 (not yet in force): see para 219 ante.

5 'Authorised advocate' has the meaning given by the Courts and Legal Services Act 1990 s 119 (see LEGAL PROFESSIONS vol 65 (2008) PARA 497); Immigration and Asylum Act 1999 s 51(6)(a) (not yet in force).

6 Ibid s 51(1)(b) (not yet in force).

7 Ibid s 51(1) (not yet in force). As to hearings in magistrates' courts see MAGISTRATES vol 29(2) (Reissue) para 726 et seq. As to the application of s 51 (not yet in force) to Scotland see s 51(5), (6)(b) (not yet in force). As to the application of s 51 (not yet in force) to Northern Ireland see s 51(6)(c), (7) (not yet in force).

8 le under ibid s 44 (not yet in force): see para 219 ante.

9 Ibid s 51(2) (not yet in force).

10 Ibid s 51(3) (not yet in force).

11 Ibid s 51(4)(a) (not yet in force).

12 Ibid s 51(4)(b) (not yet in force).

13 Ibid s 51(5)(a) (not yet in force).

14 Ibid s 51(5)(b) (not yet in force).

15 Ibid s 51(5) (not yet in force).

16 Ibid s 52(1) (not yet in force).

17 Ibid s 52(2) (not yet in force).

18 Ibid s 52(3) (not yet in force).

19 'Relevant institution' means the institution in which the detained person will be detained at the time of the bail hearing: ibid s 52(5) (not yet in force).

20 Ibid s 52(4)(a) (not yet in force).

21 Ibid s 52(4)(b) (not yet in force).

UPDATE

219-223 Bail hearings for detained persons ... Procedure

Immigration and Asylum Act 1999 ss 44-52 repealed: Nationality, Immigration and Asylum Act 2002 s 68(6)(a), Sch 9.

223 Procedure

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(6) TEMPORARY ADMISSION AND BAIL/(iii) Bail under the Immigration and Asylum Act 1999/224. Power to make new provisions in relation to bail applications.

224. Power to make new provisions in relation to bail applications.

The Immigration and Asylum Act 1999 provides that, as from a day to be appointed, the following provisions are to have effect¹. The Secretary of State² may by regulations make new provision in relation to applications for bail by persons detained under the Immigration Act 1971³. The regulations may confer a right to be released on bail in prescribed circumstances⁴, and may, in particular, make provision⁵: (1) creating or transferring jurisdiction to hear an application for bail by a person detained under the Immigration Act 1971⁶; (2) as to the places in which such an application may be held⁷; (3) as to the procedure to be followed on, or in connection with, such an application⁸; (4) as to circumstances in which, and conditions (including financial conditions) on which, an applicant may be released on bail⁹; (5) amending or repealing any enactment so far as it relates to such an application¹⁰. The regulations must include provision for securing that an application for bail made by a person who has brought an appeal under the Immigration and Asylum Act 1999 or the Special Immigration Appeals Commission Act 1997 is heard by the appellate authority hearing that appeal¹¹. The Lord Chancellor¹² must approve the regulations¹³. The right to bail is to be extended to deportation cases¹⁴.

1 The Immigration and Asylum Act 1999 Pt III (ss 44-55) is to be brought into force by order made by the Secretary of State under s 170(4) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see para 2 ante.

3 Immigration and Asylum Act 1999 s 53(1) (not yet in force). When exercising his power under s 53(1) (not yet in force), the Secretary of State must have regard to the desirability, in relation to applications for bail by persons detained under the Immigration Act 1971, of making provision similar to that which is made by the Immigration and Asylum Act 1999 Pt III (ss 44-55) (not yet in force) in relation to references to the court under s 44 (not yet in force): s 53(5) (not yet in force). At the date at which this volume states the law no such regulations had been made. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante. No regulations are to be made under s 53 unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House (s 166(5)(c)), and accordingly any such statutory instrument is not subject to annulment by a resolution of either House of Parliament (s 166(6)(a)).

4 Ibid s 53(2) (not yet in force).

5 Ibid s 53(3) (not yet in force).

6 Ibid s 53(3)(a) (not yet in force).

7 Ibid s 53(3)(b) (not yet in force).

- 8 Ibid s 53(3)(c) (not yet in force).
- 9 Ibid s 53(3)(d) (not yet in force).
- 10 Ibid s 53(3)(e) (not yet in force).
- 11 Ibid s 53(4) (not yet in force).
- 12 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.
- 13 Immigration and Asylum Act 1999 s 53(6) (not yet in force).
- 14 See ibid s 54 (not yet in force), which applies the Immigration Act 1971 Sch 2 paras 22-25 to persons detained following a recommendation for deportation or a deportation order under Sch 3 para 2(1), (3) (see paras 166, 213 ante).

UPDATE

224 Power to make new provisions in relation to bail applications

TEXT AND NOTES--See also Immigration and Asylum Act 1999 s 53(6A), (6B), (8), (9) (added by Constitutional Reform Act 2005 Sch 4 para 284).

TEXT AND NOTE 1--Day appointed for purposes of 1999 Act s 53(1)-(4), (6), (7) is 10 February 2003: SI 2003/2.

NOTES 3-13--As to commencement of 1999 Act s 53 see TEXT AND NOTE 1.

TEXT AND NOTES 3, 6--1999 Act s 53(1), (3)(a) amended so as to additionally refer to persons detained under the Nationality, Immigration and Asylum Act 2002 s 62 (see PARA 156): 1999 Act s 53(1) (amended by the Nationality, Immigration and Asylum Act 2002 s 62(13)).

NOTE 3--1999 Act s 53(5) repealed: Nationality, Immigration and Asylum Act 2002 s 68(6)(b).

TEXT AND NOTE 11--Reference to the 1999 Act is now to the Nationality, Immigration and Asylum Act 2002: 1999 Act s 53(4) (amended by the 2002 Act Sch 7 para 28).

TEXT AND NOTE 13--The Lord Chancellor's function under the 1999 Act s 53(6) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(7) EUROPEAN ECONOMIC AREA NATIONALS AND THEIR FAMILIES/(i) In general/225. Admission to the United Kingdom under European Law.

(7) EUROPEAN ECONOMIC AREA NATIONALS AND THEIR FAMILIES

(i) In general

225. Admission to the United Kingdom under European Law.

A person does not require leave under the Immigration Act 1971¹ to enter or remain in the United Kingdom² if he is entitled to do so by virtue of European law, and the Immigration Rules do not generally apply to such a person³.

The EC Treaty⁴ establishes citizenship of the European Community and provides that every citizen of the European Community is to have the right to move and reside freely within the territory of the member states⁵. It further provides for the freedom of movement for workers within the European Community⁶. This includes the right, subject to limitations justified on grounds of public policy, public security or public health, to move freely within the territory of member states⁷, to stay in a member state for the purpose of employment in accordance with the provisions governing the employment of nationals of that state laid down by law, regulation or administrative action⁸ and to remain in the territory of a member state after having been employed in that state⁹. The EC Treaty also provides that restrictions on the freedom of establishment of nationals of a member state in the territory of another member state are to be prohibited¹⁰ and that restrictions on freedom to provide services within the European Community are to be prohibited in respect of nationals of member states who are established in a state of the European Community other than that of the person for whom the services are intended¹¹. These provisions of the EC Treaty are given effect by various European Directives and Regulations¹², which are implemented in the United Kingdom by the Immigration (European Economic Area) Regulations 2000¹³.

The rights of British citizens with respect to residence in the United Kingdom are governed by domestic law in the absence of a link to European Community law¹⁴.

1 As to immigration control under the Immigration Act 1971 see para 83 et seq ante.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395). The Immigration Rules do not apply to those persons who are entitled to enter or remain in the United Kingdom by virtue of the provisions of the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (see the text and note 12 infra) or of EEC Commission Regulation 1251/70 (OJ L142, 30.6.19, p 24) (see note 11 infra), but any person who is not entitled to rely on those provisions is covered by the rules: Immigration Rules para 5 (substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 2).

4 I.e. the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179).

5 EC Treaty arts 17, 18(1) (formerly arts 8, 8a and renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ). EC Treaty art 18(1) (as renumbered) is of direct effect, and domestic provisions must not impose disproportionate restrictions on the rights conferred by it: see Case C-413/99 *Baumbast v Secretary of State for the Home Department* [2002] All ER (D) 80 (Sep), ECJ.

6 EC Treaty art 39(1) (formerly art 48 and renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ).

The right of free movement from one member state to another does not confer private rights on an individual against a carrier where the second member state requires the carrier to insist that individuals must carry certain documents: *Naraine v Hoverspeed* (1999) Independent, 18 November, CA. Carriers' liability legislation is not in contravention of the EC Treaty art 49 (as renumbered) or of EEA nationals' free movement rights: *R v Secretary of State for the Home Department, ex p Hoverspeed* [1999] INLR 591. As to carriers' liability see paras 203-204 ante.

7 EC Treaty art 39(3)(b) (as renumbered: see note 6 supra).

8 Ibid art 39(3)(c) (as renumbered: see note 6 supra).

9 See ibid art 39(3)(d) (as renumbered: see note 6 supra).

10 See ibid art 43 (formerly art 52 and renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ).

11 See ibid art 49 (formerly art 59 and renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ). This extends to a national of one member state who provides services to recipients in another member state without leaving his own state: *Carpenter v Secretary of State for the Home Department* [2002] 2 CMLR 64, ECJ.

12 See eg EEC Council Regulation 1612/68 (OJ L257, 19.10.68, p 2) on freedom of movement for workers within the Community; EEC Commission Regulation 1251/70 (OJ L142, 30.6.70, p 24) on the right of workers to remain in the territory of a member state after having been employed in that state; the EEC Council Directive 64/221 (OJ B56, 4.4.64, p 850) on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health; the EEC Council Directive 68/360 (OJ L257, 19.10.68, p 13) on the abolition of restrictions on movement and residence within the Community for workers of member states and their families; the EEC Council Directive 73/148 (OJ L172, 28.6.73, p 14) on the abolition of restrictions on movement and residence within the Community for nationals of member states with regard to establishment and the provision of services; the EEC Council Directive 90/364 (OJ L180, 13.7.90, p 26) on the right of residence; the EEC Council Directive 90/365 (OJ L180, 13.7.90, p 28) on the right of residence for employees and self-employed persons who have ceased their occupational activity; and the EEC Council Directive 93/96 (OJ L317, 18.12.93, p 59) on the right of residence for students.

13 Ie the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended), made under the European Communities Act 1972 s 2(2) and the Immigration and Asylum Act 1999 s 80 (see para 182 ante): see para 228 et seq post. These regulations have been modified in their application to Swiss nationals by the Immigration (Swiss Free Movement of Persons) (No 3) Regulations 2002, SI 2002/1241.

14 Case C-370/90 *R v Immigration Appeal Tribunal, ex p Secretary of State for the Home Department* [1992] 3 All ER 798, [1992] ECR I-4265, ECJ; Case C-60/00 *Carpenter v Secretary of State for the Home Department* [2002] 2 CMLR 64, ECJ. As to the position of persons with dual nationality see *R v Immigration Appeal Tribunal, ex p Aradi* [1987] Imm AR 359; *R v Secretary of State for Home Affairs, ex p Tombofa* [1988] 2 CMLR 609, [1988] Imm AR 400, CA.

UPDATE

225 Admission to the United Kingdom under European Law

NOTES--See also the European Union (Accessions) Act 2003 s 2, which empowers the Secretary of State to make regulations granting nationals of the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic the same rights to work in the United Kingdom as are enjoyed by nationals of EEA states, and the European Union (Accessions) Act 2006 s 2, which empowers the Secretary of State to make regulations granting nationals of the Republic of Bulgaria and Romania the same rights to work in the United Kingdom as are enjoyed by nationals of EEA states. In exercise of the powers conferred on him by s 2, the Secretary of State has made the Accession (Immigration and Worker Registration) Regulations 2004, SI 2004/1219 (amended by SI 2004/1236, SI 2006/1003, SI 2007/475, SI 2007/928, SI 2007/3012, SI 2009/892, SI 2009/2426), and the Accession (Immigration and Worker Authorisation) Regulations 2006, SI 2006/3317 (amended by SI 2007/475, SI 2007/3012, SI 2007/3224, SI 2009/2426, SI 2009/2748). See *Zalewska v Department for Social Development* [2008] UKHL 67, [2009] 2 All ER 320.

NOTE 3--EC Commission Regulation 1251/70: repealed by EC Commission Regulation 635/2006 (OJ L112 26.4.2006 p 9); see now art 17 of European Parliament and EC Council Directive 2004/38 (OJ L158 30.4.2004 p 77) on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states.

NOTE 5--*Baumbast*, cited, reported at [2003] ICR 1347. Young minors are able to take advantage of the free movement provisions: Case C-200/02 *Chen v Secretary of State for the Home Department* [2005] All ER (EC) 129, ECJ. See also *Ali v Secretary of State for the Home Department* [2006] EWCA Civ 484, [2006] All ER (D) 28 (May) (applicant's child did not enjoy right of residence in the United Kingdom merely on account of EC Treaty art 118 and the fact that he was in receipt of primary education); and *R (on the application of H) v Secretary of State for the Home Department* [2008] All ER (D) 28 (Jan), CA.

NOTE 7--A member state may take into account the fact of one of its national's repatriation from another member state on account of his illegal residence there when restricting his right of free movement but only to the extent that his personal conduct constituted a genuine, present and sufficiently serious threat to one of the fundamental interests of society: Case C-33/07 *Ministerul Administrației și Internelor - Direcția Generală de Pașapoarte București v Jipa* [2008] CMLR 715, [2008] All ER (D) 138 (Jul), ECJ.

NOTE 12--EC Commission Regulation 1251/70: repealed by EC Commission Regulation 635/2006 (OJ L112 26.4.2006 p 9); see now art 17 of European Parliament and EC Council Directive 2004/38 (OJ L158 30.4.2004 p 77) on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states. See Case C-408/03 *European Commission v Belgium* [2006] All ER (EC) 725, ECJ (law restricting residence to those who could support themselves financially was inconsistent with Directive 90/364 where permitted only individual income to be considered); and *W v Secretary of State for the Home Department* [2006] EWCA Civ 1494, [2007] 1 WLR 1514 (absence of health insurance meant applicants could not support themselves financially and so could not rely on Directive 90/364).

NOTE 13--SI 2000/2326 replaced: Immigration (European Economic Area) Regulations 2006, SI 2006/1003 (amended by SI 2007/3224, SI 2009/1117).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(7) EUROPEAN ECONOMIC AREA NATIONALS AND THEIR FAMILIES/(i) In general/226. Exclusion or removal on grounds of public policy, public security or public health.

226. Exclusion or removal on grounds of public policy, public security or public health.

The Immigration (European Economic Area) Regulations 2000¹ provide for an EEA national² to be admitted to the United Kingdom³ and to reside there⁴, although he may be excluded or removed on grounds of public policy, public security or public health.

Decisions taken on grounds of public policy, public security or public health ('the relevant grounds') must be taken in accordance with the following principles:

- 583 (1) the relevant grounds must not be invoked to secure economic ends⁵;
- 584 (2) a decision taken on one or more of the relevant grounds must be based exclusively on the personal conduct of the individual in respect of whom the decision is taken⁶;
- 585 (3) a person's previous criminal convictions do not, in themselves, justify a decision on grounds of public policy or public security⁷;
- 586 (4) a decision to refuse admission to the United Kingdom, or to refuse to grant the first residence permit⁸ or residence document⁹, to a person on the grounds that he has a disease or disability may be justified only if the disease or disability is of a specified type¹⁰;
- 587 (5) a disease or disability contracted after a person has been granted a first residence permit or first residence document does not justify a decision to refuse to renew the permit or document or a decision to remove him¹¹;
- 588 (6) a person is to be informed of the grounds of public policy, public security or public health upon which the decision taken in his case is based unless it would be contrary to the interests of national security to do so¹².

- 1 le the Immigration (European Economic Area) Regulations 2000, SI 2000/2326.
- 2 For the meaning of 'EEA national' see para 227 post.
- 3 See para 228 et seq post. As to the meaning of 'United Kingdom' see para 5 note 1 ante.
- 4 See para 230 et seq post.
- 5 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 23(a).
- 6 Ibid reg 23(b). See Case 41/74 *Van Duyn v Home Office* [1975] Ch 358, [1974] ECR 1337, ECJ (membership of undesirable organisation is personal conduct justifying exclusion); Case 67/74 *Bonsignore v Oberstadtdirektor der Stadt Köln* [1975] ECR 297, [1975] 1 CMLR 472, ECJ (general deterrence insufficient to justify exclusion). See also Case C-348/96 *Criminal proceedings against Donatella Calfa* [1999] ECR I-11, [1999] All ER (EC) 850, ECJ; Case C-340/97 *Nazli v Stadt Nürnberg* [2000] ECR I-957, ECJ. The activities in question do not have to be illegal: *Van Duyn v Home Office* supra.
- 7 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 23(c). See Case 30/77 *R v Bouchereau* [1978] QB 732, [1977] ECR 1999, ECJ (the conviction must be evidence of a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society); *R v Secretary of State for the Home Department, ex p Santillo* [1981] QB 778, [1981] 2 All ER 897, CA; Case C-340/97 *Nazli v Stadt Nürnberg* [2000] ECR I-957, ECJ (the personal conduct must indicate a risk of new and serious prejudice to the requirements of public policy). Measures taken must be reasonable and not disproportionate to the gravity of the conduct: *R v Bouchereau* supra; *B v Secretary of State for the Home Department* [2000] Imm AR 478, CA.
- 8 As to the issue of residence permits see para 231 et seq post.
- 9 As to the issue of residence documents see para 231 et seq post.
- 10 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 23(d). As to the diseases that may justify a decision taken on grounds of public health see reg 23(d), Sch 1 para 1. The following diseases or disabilities may justify a decision taken on grounds of public policy or public security: (a) drug addiction; (b) profound mental disturbance or manifest conditions of psychotic disturbance with agitation, delirium, hallucinations or confusion: Sch 1 para 2.
- 11 Ibid reg 23(e).
- 12 Ibid reg 23(f). See Case 36/75 *Rutili v Minister for the Interior* [1975] ECR 1219, ECJ.

UPDATE

226 Exclusion or removal on grounds of public policy, public security or public health

TEXT AND NOTES--SI 2000/2326 reg 23, Sch 1 now Immigration (European Economic Area) Regulations 2006, SI 2006/1003, reg 21. See *LG (Italy) v Secretary of State for the Home Department* [2008] EWCA Civ 190, [2008] All ER (D) 262 (Mar); *HR (Portugal) v Secretary of State for the Home Department* [2009] EWCA Civ 371, [2010] 1 All ER 144; and *BF (Portugal) v Secretary of State for the Home Department* (2009) Times, 18 August, CA.

NOTES 6, 7--Reliance on the concept of public policy to refuse entry presupposes the existence of a genuine and sufficiently serious threat to the requirements of public policy that affects one of the fundamental interests of society: Case C-503/03 *EC Commission v Spain* [2007] All ER (EC) 797, ECJ.

NOTE 7--In the absence of direct guidance at Community level regarding the necessary level of violence to suffice to make threatened future criminal conduct 'serious', member states are entitled to decide what its law abiding citizens must put up with: *Bulale v*

Secretary of State for the Home Department [2008] EWCA Civ 806, [2009] QB 536, [2008] All ER (D) 147 (Jul).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(7) EUROPEAN ECONOMIC AREA NATIONALS AND THEIR FAMILIES/(i) In general/227. Meanings of 'EEA national' and 'qualified person'.

227. Meanings of 'EEA national' and 'qualified person'.

For the purposes of the Immigration (European Economic Area) Regulations 2000¹, an 'EEA national' is a national of an EEA state²; and a 'qualified person' means a person who is an EEA national and who is in the United Kingdom³ as:

- 589 (1) a worker⁴;
- 590 (2) a self-employed person⁵;
- 591 (3) a provider of services⁶;
- 592 (4) a recipient of services⁷;
- 593 (5) a self-sufficient person⁸;
- 594 (6) a retired person⁹;
- 595 (7) a student¹⁰;
- 596 (8) a self-employed person who has ceased activity¹¹;
- 597 (9) the family member¹² of a qualified person referred to in head (8) above, if the qualified person has died, and the family member was residing with him in the United Kingdom immediately before his death¹³;
- 598 (10) the family member of a qualified person referred to in head (2) above where the qualified person has died, the family member resided with him immediately before his death, and (a) the qualified person had resided continuously in the United Kingdom for at least the two years immediately before his death; (b) or the death was the result of an accident at work or an occupational disease; or (c) his surviving spouse is a United Kingdom national¹⁴.

A worker does not cease to be a qualified person solely because he is temporarily incapable of work as a result of illness or accident, or he is involuntarily unemployed, if that fact is duly recorded by the relevant employment office¹⁵. A self-employed person does not cease to be a qualified person solely because he is temporarily incapable of work as a result of illness or accident¹⁶.

1 Ie the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended).

2 Ibid reg 2. See also para 237 note 8 post. 'EEA state' means a state, other than the United Kingdom, which is a contracting party to the Agreement on the European Economic Area (Oporto, 2 May 1992; OJ L1, 3.1.94, p 3; Cm 2073) as adjusted by the Protocol (Brussels, 17 March 1993; OJ L1, 3.1.94, p 571; Cm 2183): Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 2. 'United Kingdom national' means a person who falls to be treated as a national of the United Kingdom for the purposes of the Community Treaties: reg 2. As to United Kingdom nationals generally see para 7 ante.

EEA nationals do not have the right of abode in the United Kingdom in domestic law, and indeed their right to live and work in the United Kingdom (or any member state other than their own) is dependent upon their being nationals of one or other member state (ie as defined by that state: see Case C-192/99 *R (on the application of Kaur) v Secretary of State for the Home Department* [2001] ECR I-1237, [2001] All ER (EC) 250, ECJ) and so presumably having the equivalent of the right of abode in that state. Equally, those defined as United Kingdom nationals so as to have similar rights in other European Community countries either have or (in the case of Gibraltar) are entitled to acquire the right of abode in the United Kingdom: see paras 7, 18 ante. The residence right of EEA nationals and their family members should not therefore be seen as an additional and

free-standing form of right of abode (though in many cases the practical effect will be the same); its basis is an extension throughout the EEA of a right already held in one member state.

3 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

4 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 5(1)(a). 'Worker' means a worker within the meaning of the EC Treaty (Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 39 (as renumbered: see para 225 note 5 ante): Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 3(1)(a). The term 'worker' is not to be interpreted restrictively: Case 53/81 *Levin v Secretary of State for Justice* [1982] ECR 1035, [1982] 2 CMLR 454, ECJ. It includes job seekers: Case C-292/89 *R v Immigration Appeal Tribunal, ex p Antonissen* [1991] ECR I-745, [1991] 2 CMLR 373, ECJ; CASE C-344/95 *EC Commission v Belgium (re Treatment of Migrant Workers)* [1997] ECR I-1035, [1997] 2 CMLR 187 (member states may not require a job seeker who was given a reasonable period of time to find work to leave at the end of the period if he produces evidence that he is continuing to seek work and has genuine chances of securing it (however, see EEC Council Regulation 1612/68 (OJ L257, 19.10.68, p 2) on freedom of movement for workers within the Community art 7, distinguishing between workers and work seekers for the purposes of enjoyment of social and tax advantages)). The term 'worker' also covers workers undergoing vocational training: Case 39/86 *Lair v Hanover University* [1988] ECR 3161, [1989] 3 CMLR 545, ECJ; Case 197/86 *Brown v Secretary of State for Scotland* [1988] ECR 3205, [1988] 3 CMLR 403, ECJ; Case C-3/90 *Bernini v Minister van Onderwijs en Wetenschappen* [1992] ECR I-1071, ECJ. The essential characteristic of the employment relationship is the fact that during a given time one person provides services for and under the direction of another in return for remuneration: Case 66/85 *Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121, [1987] 3 CMLR 389, ECJ; CASE C-36/96 *Günaydin v Freistaat Bayern* [1997] ECR I-5143, [1998] 1 CMLR 871, ECJ. It includes part-time work: Case 139/85 *Kempf v Staatssecretaris van Justitie* [1986] ECR 1741, [1987] 1 CMLR 764, ECJ; Case 171/88 *Rinner-Kühn v FWW Spezial-Gebäudereinigung GmbH & Co KG* [1989] ECR 2743, [1993] 2 CMLR 932, ECJ; Case C-444/93 *Megner v Innungskrankenkasse Vorderpfalz* [1995] ECR I-4741, [1996] All ER (EC) 212, ECJ.

5 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 5(1)(b). 'Self-employed person' means a person who establishes himself in order to pursue activity as a self-employed person in accordance with the EC Treaty art 43 (as renumbered: see para 225 note 9 ante), or who seeks to do so: Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 3(1)(b).

6 Ibid reg 5(1)(c). 'Provider of services' means a person who provides, or seeks to provide, services within the meaning of the EC Treaty art 50 (formerly art 60 and renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ) (see infra): Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 3(1)(c). Services are considered to be 'services' within the meaning of the EC Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons: EC Treaty art 50 para 1 (as renumbered). In particular, 'services' include: (1) activities of an industrial character; (2) activities of a commercial character; (3) activities of craftsmen; and (4) activities of the professions: art 50 para 2 (as renumbered). An EEA national may enforce the right against his own state if providing cross-border services: Case C-60/00 *Carpenter v Secretary of State for the Home Department* [2002] 2 CMLR 64, ECJ.

7 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 5(1)(d). 'Recipient of services' means a person who receives, or seeks to receive, services within the meaning of the EC Treaty art 50 (as renumbered: see note 6 supra): Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 3(1)(d).

8 Ibid reg 5(1)(e). 'Self-sufficient person' means a person who has sufficient resources to avoid his becoming a burden on the social assistance system of the United Kingdom, and is covered by sickness insurance in respect of all risks in the United Kingdom: reg 3(1)(e). For these purposes, resources or income are to be regarded as sufficient if they exceed the level in respect of which the recipient would qualify for social assistance: reg 3(2).

9 Ibid reg 5(1)(f). 'Retired person' means a person who has pursued an activity as an employed or self-employed person, is in receipt of an invalidity or early retirement pension, old age benefits, survivor's benefits or a pension in respect of an industrial accident or disease sufficient to avoid his becoming a burden on the social security system of the United Kingdom, and is covered by sickness insurance in respect of all risks in the United Kingdom: reg 3(1)(f). For these purposes, resources or income are to be regarded as sufficient if they exceed the level in respect of which the recipient would qualify for social assistance: reg 3(2).

10 Ibid reg 5(1)(g). 'Student' means a person who: (1) is enrolled at a recognised educational establishment in the United Kingdom for the principal purpose of following a vocational training course; (2) assures the Secretary of State by means of a declaration, or by such alternative means as he may choose that are at least equivalent, that he has sufficient resources to avoid him becoming a burden on the social assistance system of the United Kingdom; and (3) is covered by sickness insurance in respect of all risks in the United Kingdom: reg 3(1)(g). As to the Secretary of State see para 2 ante.

11 Ibid reg 5(1)(h). 'Self-employed person who has ceased activity' means:

- 98 (1) a person who on the day on which he terminates his activity as a self-employed person has reached the age at which he is entitled to a state pension, has pursued such activity in the United Kingdom for at least the 12 months prior to its termination and has resided continuously in the United Kingdom for more than three years (reg 4(1)(a));
- 99 (2) a person who has resided continuously in the United Kingdom for more than two years and has terminated his activity there as a self-employed person as a result of a permanent incapacity to work (reg 4(1)(b) (amended by SI 2001/865));
- 100 (3) a person who has resided and pursued activity as a self-employed person in the United Kingdom, has terminated that activity as a result of a permanent incapacity to work and such incapacity is the result of an accident at work or an occupational illness which entitles him to a pension payable in whole or in part by the state (Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 4(1)(c));
- 101 (4) a person who has been continuously resident and continuously active as a self-employed person in the United Kingdom for three years and is active as a self-employed person in the territory of an EEA state but resides in the United Kingdom and returns to his residence at least once a week (reg 4(1)(d)).

However, if the person is the spouse of a United Kingdom national the conditions as to length of residence and activity in head (1) supra do not apply, and the condition as to length of residence in head (2) supra does not apply: reg 4(2). For the purposes of heads (1)-(3) supra periods of activity completed in an EEA state by a person who is active as a self-employed person in the territory of an EEA state but resides in the United Kingdom and returns to his residence at least once a week is considered as having been completed in the United Kingdom: reg 4(3) (amended by SI 2001/865). For the purposes of heads (1)-(4) supra, periods of absence from the United Kingdom which do not exceed three months in any year or periods of absence from the United Kingdom on military service are not to be taken into account, and periods of inactivity caused by circumstances outside the control of the self-employed person and periods of inactivity caused by illness or accident are to be treated as periods of activity as a self-employed person: Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 4(4).

'Spouse' does not include a party to a marriage of convenience: reg 2(1). See *Yee-Kee Kwong v Secretary of State for the Home Department* (3 February 1994, unreported), IAT; *Kam Yu Lau v Secretary of State for the Home Department* (20 April 2004, unreported), IAT, and *Yuen v Secretary of State for the Home Department* (2 September 1998, unreported), IAT. In *Chang v Secretary of State for the Home Department* (24 April 2001, unreported), IAT, a starred Tribunal held that European law did not prevent the United Kingdom from investigating and regulating marriages with EEA nationals. But the spouse does not need to be living in the same household: Case 267/83 *Diatta v Land Berlin* [1985] ECR 567, [1986] 2 CMLR 164, ECJ (separated but not divorced spouse entitled to remain on the territory where her husband exercised free movement rights). It has been held that a cohabiting unmarried partner is not a spouse under European law: *Reed v Netherlands* Case 59/85 [1986] ECR 1283. However, see the Advocate General's opinion in Case C-65/98 *Safet Eyüp v Landesgeschäftsstelle des Arbeitsmarktservice Vorarlberg* [2000] ECR I-4747, ECJ.

'Military service' means service in the armed forces of an EEA state: Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 2(1).

12 The following principles apply in order to determine the persons who are family members of another person (ibid reg 6(1)): (1) if the other person is a student, the persons are his spouse and his dependent children (reg 6(2)); and (2) in any other case, the persons are his spouse, descendants of his or of his spouse who are under 21 or are their dependants and dependent relatives in his ascending line or that of his spouse (reg 6(4)).

13 Ibid reg 5(4)(a).

14 Ibid reg 5(4)(b). For these purposes, periods of absence from the United Kingdom which do not exceed three months in any year or periods of absence from the United Kingdom on military service are not to be taken into account: reg 5(5).

15 Ibid reg 5(2).

16 Ibid reg 5(3).

UPDATE

227 Meanings of 'EEA national' and 'qualified person'

TEXT AND NOTES--SI 2000/2326 replaced: Immigration (European Economic Area) Regulations 2006, SI 2006/1003 (amended by SI 2007/3224).

NOTE 2--'EEA state' now means a member state other than the United Kingdom, Norway, Iceland, Liechtenstein or Switzerland: *ibid* reg 2(1).

TEXT AND NOTES 3-14--Definition of 'qualifying person' now set out in *ibid* reg 6.

NOTE 4--Definition of 'worker' now set out in *ibid* reg 4(1)(a). A national from a non-member state is not entitled to work in his spouse's member state of nationality where the spouse works in a different member state and both are resident there: Case C-10/05 *Mattern v Ministre du Travail et de l'Emploi* [2006] 2 CMLR 42, ECJ.

NOTE 5--In definition of 'self-employed person' words 'or who seeks to do so' omitted: SI 2006/1003 reg 4(1)(b).

TEXT AND NOTE 6--Now head (3) a jobseeker (which means a person who enters the United Kingdom in order to seek employment and can provide evidence that he is seeking employment and has a genuine chance of being engaged): *ibid* reg 6(1)(a).

TEXT AND NOTE 7--Head (4) not replicated.

NOTE 8--Definition of 'self-sufficient person' subject to minor alteration: see SI 2006/1003 reg 4(1)(c), (2).

TEXT AND NOTES 9, 11-14--Those persons mentioned in heads (6), (8)-(10) now fall outside the definition of 'qualifying member' although they may acquire the right to reside permanently in the United Kingdom under *ibid* reg 15. Lawful presence is not the same as a right to reside: *Abdirahman v Secretary of State for Work and Pensions*; *Abdirahman v Leicester City Council*; *Ullusow v Secretary of State for Work and Pensions* [2007] EWCA Civ 657, [2007] 4 All ER 882. *Abdirahman*, cited, applied in *Patmalniece v Secretary of State for Work and Pensions* [2009] EWCA Civ 621, [2009] 4 All ER 738.

TEXT AND NOTE 9--Head (6) not replicated.

NOTE 10--Definition of 'student' subject to minor alteration: see SI 2006/1003 reg 4(1)(d) (amended by SI 2007/3224).

TEXT AND NOTE 11--Now, head (8) a worker or self-employed person who has ceased activity; definition now relates to 'worker or self-employed person who has ceased activity': see *ibid* reg 5. Definitions of 'spouse' and 'military service' now set out in reg 3(1).

NOTE 12--Additionally, civil partners are now family members: see *ibid* reg 7(1), (2). In certain circumstances an 'extended family member' may be treated as a family member: see regs 7(3), (4), 8.

TEXT AND NOTE 15--Now *ibid* reg 6(2)(a), (b). Additionally, a person is to be treated as a worker if he is involuntarily unemployed and has embarked on vocational training, or he has voluntarily ceased working and embarked on vocational training that is related to his previous employment: reg 6(2)(c), (d).

TEXT AND NOTE 16--Now *ibid* reg 6(3).

(ii) Admission

228. Right of admission to the United Kingdom.

An EEA national¹ must be admitted to the United Kingdom² if he produces, on arrival, a valid national identity card or passport issued by an EEA state³. A family member⁴ of an EEA national who is not himself an EEA national must be admitted to the United Kingdom if he produces on arrival a valid national identity card issued by an EEA state, or a valid passport⁵, and either where the family member is a visa national⁶ or a person who seeks to be admitted to install himself with a qualified person⁷, a valid EEA family permit⁸ or residence document⁹, or in all other cases (but only where required by an immigration officer) a document proving that he is a family member of a qualified person¹⁰. However, a person is not entitled to be so admitted to the United Kingdom if his exclusion is justified on grounds of public policy, public security or public health¹¹, or if, at the time of his arrival, he is not the family member of a qualified person¹².

Where a person is a relative of an EEA national¹³ or his spouse¹⁴ and¹⁵:

- 599 (1) is dependent on the EEA national or his spouse¹⁶;
- 600 (2) is living as part of the EEA national's household outside the United Kingdom¹⁷;
- or
- 601 (3) was living as part of the EEA national's household before the EEA national came to the United Kingdom¹⁸,

and if in all the circumstances it appears to the decision-maker¹⁹ appropriate to do so, the decision-maker may issue to that person an EEA family permit, a residence permit²⁰ or a residence document, as the case may be²¹.

Where:

- 602 (a) after leaving the United Kingdom, the United Kingdom national²² resided in an EEA state and was employed there (other than on a transient or casual basis), or established himself there as a self-employed person²³;
- 603 (b) the United Kingdom national did not leave the United Kingdom in order to enable his family member to acquire rights under the Immigration (European Economic Area) Regulations 2000 and thereby to evade the application of United Kingdom immigration law²⁴;
- 604 (c) on his return to the United Kingdom, the United Kingdom national would, if he were an EEA national, be a qualified person²⁵; and
- 605 (d) if the family member of the United Kingdom national is his spouse, the marriage took place, and the parties lived together in an EEA state, before the United Kingdom national returned to the United Kingdom²⁶,

the Immigration (European Economic Area) Regulations 2000 apply to a person who is the family member of a United Kingdom national returning to the United Kingdom as if that person were the family member of an EEA national²⁷.

1 For the meaning of 'EEA national' see para 227 ante.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 12(1). Regulation 12(1) is expressed to be subject to reg 21(1) (see the text and note 11 infra): reg 12(1). For the meaning of 'EEA state'

see para 227 note 2 ante. As to the administrative provisions in relation to the control of entry under the Immigration Act 1971 see the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, regs 24, 25.

Under European law, nationals of a member state are entitled to rely on European Community law on return to their member state having exercised European Community rights on the territory of another member state: Case C-19/92 *Kraus v Land Baden-Württemberg* [1993] ECR I-1663; Case C-370/90 *R v Immigration Appeal Tribunal and Surinder Singh, ex p Secretary of State for the Home Department* [1992] 3 All ER 798, [1992] ECR I-4265, ECJ.

4 Children of persons exercising their rights under European Community law have a right to be admitted to the host state's educational and training courses on the same conditions as nationals: see the EEC Council Regulation 1612/68 (OJ L257, 19.10.68, p 2) on freedom of movement for workers within the Community, art 12; Cases 389/87, 390/87 *Echternach v Minister van Onderwijs en Wetenschappen* [1989] ECR 723, [1990] 2 CMLR 305, ECJ. Children who entered the educational system of the host state when a parent was exercising rights under the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) are entitled to remain to continue their education after the parent's permanent departure or divorce: see Case C-413/99 *Baumbast v Secretary of State for the Home Department* [2002] All ER (D) 80 (Sep), ECJ. Primary carers of such children have the right to remain with the children in these circumstances, if that is necessary for children to exercise their right to remain for education: see *Baumbast v Secretary of State for the Home Department* supra. As to who is a spouse see para 227 note 11 ante.

5 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 12(2)(a). Regulation 12(2) is expressed to be subject to reg 21(1), (2) (see the text and note 11 infra): reg 12(2).

6 'Visa national' means a person who requires a visa for the United Kingdom because he is a national or citizen of one of the countries or territorial entities for the time being specified in the Immigration Rules: Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 2(1); and see para 96 ante. As to the Immigration Rules see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).

7 For the meaning of 'qualified person' see para 227 ante.

8 For the meaning of 'EEA family permit' see para 229 note 2 post. As to the issue of EEA family permits see para 229 post.

9 As to residence documents see para 231 et seq post.

10 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 12(2)(b). See note 5 supra.

Where workers have never exercised the right to freedom of movement under the EC Treaty, there is no link to the EEA and the member state in question cannot be prevented by European law from refusing entry or stay to the non-EEA family members of a local national: Cases 35/82, 36/82 *Morson and Jhanjan v Netherlands; Sweradjie Jhanjan v Netherlands* [1982] ECR 3723, [1983] 2 CMLR 221, ECJ. See also *Aradi v Immigration Officer, Heathrow* [1985] Imm AR 184, IAT (Iranian citizen married dual British and Irish citizen: held to be no factor linking applicant to European law as spouse had never moved to exercise her right to freedom of movement as a worker); *R v Secretary of State for Home Affairs, ex p Tombofa* [1988] 2 CMLR 609, [1988] Imm AR 400, CA (Nigerian citizen married to British citizen who had not moved from another member state held not entitled to benefit of European law); and Case C-153/91 *Petit v Office National des Pensions* [1992] ECR I-4973, [1993] 1 CMLR 476, ECJ (adopted child not exercising European Community rights). However, the possession of British nationality will not prevent reliance on European Community law in the United Kingdom where the person has resided in another member state (see Case 197/86 *Brown v Secretary of State for Scotland* [1988] ECR 3205, [1988] 3 CMLR 403, ECJ) or provided services there (Case C-60/00 *Carpenter v Secretary of State for the Home Department* [2002] 2 CMLR 64, ECJ).

11 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 21(1). As to decisions on the grounds of public policy, security and health see para 226 ante.

An EEA national who entered the United Kingdom after an exclusion order had been made against him lost his right to enter without leave and was properly treated as an illegal entrant: *Shingara v Secretary of State for the Home Department* [1999] Imm AR 257, CA. However, a prohibition on entry against an EEA national may not be of indefinite duration, as it derogates from a fundamental principle, and so European Community nationals are entitled to have their situation re-examined to see whether the circumstances justifying their exclusion still exist: Cases C-111/95 and C-65/95 *R v Secretary of State for the Home Department, ex p Shingara* [1997] ECR I-3343, [1997] All ER (EC) 577, ECJ.

The safeguards of the EEC Council Directive 64/221 (OJ B56, 4.4.64, p 850) on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, art 9 (right of review or appeal before exclusion) do not apply to persons refused admission, but refusal of admission of an EEA national after a protracted period of temporary admission

is in fact an expulsion decision attracting such safeguards: Case C-357/98 *R (on the application of Yiadom) v Secretary of State for the Home Department* [2001] All ER (EC) 267, ECJ.

12 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 21(2). See note 11 supra.

13 For these purposes, 'EEA national' does not include: (1) an EEA national who is in the United Kingdom as a self-sufficient person, a retired person or a student; (2) an EEA national who, when he is in the United Kingdom, will be a person referred to in head (1) supra: Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 10(5). For the meaning of 'self-sufficient person' see para 227 note 8 ante. For the meaning of 'retired person' see para 227 note 9 ante. For the meaning of 'student' see para 227 note 10 ante.

14 As to the meaning of 'spouse' see para 227 note 11 ante.

15 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 10(4) (amended by SI 2001/865).

16 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 10(4)(a). The dependency does not have to be necessary, and receipt of social assistance does not mean that the family member is no longer dependent: Case 316/85 *Centre Public d'Aide Sociale, Courcelles v Lebon* [1987] ECR 2811, [1989] 1 CMLR 337, ECJ; Case 256/86 *Frascogna v Caisse des dépôts et Consignations* [1987] ECR 3431, ECJ.

17 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 10(4)(b).

18 Ibid reg 10(4)(c).

19 'Decision-maker' means the Secretary of State, an immigration officer or an entry clearance officer (as the case may be): ibid reg 2(1). 'Entry clearance officer' means a person responsible for the grant or refusal of entry clearances: reg 2(1).

20 As to the issue of residence permits see para 231 et seq post.

21 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 10(1). Where a permit or document has been issued under reg 10(1), the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended) apply to the holder of the permit or document as if he were the family member of an EEA national and the permit or document had been issued to him under reg 13 (issue of EEA family permit) (see para 229 post) or reg 15 (issue of residence permits and residence documents) (see para 231 post): reg 10(2). Without prejudice to reg 22 (refusal to renew residence permit or residence document, and revocation of residence permit, residence document or EEA family permit) (see paras 234-235 post), a decision-maker may revoke (or refuse to renew) a permit or document issued under reg 10(1) if he decides that the holder no longer satisfies any of the conditions or reg 10(4) (see the text and notes 13-18 supra): reg 10(3).

22 For the meaning of 'United Kingdom national' see para 227 note 2 ante.

23 Ibid reg 11(2)(a). For the meaning of 'self-employed person' see para 227 note 5 ante.

24 Ibid reg 11(2)(b). The requirements of reg 11(2)(b) and those of reg 11(2)(d) (see the text and note 26 infra) are not in accordance with European law: see Case C-370/90 *R v Immigration Appeal Tribunal, ex p Secretary of State for the Home Department* [1992] 3 All ER 798, [1992] ECR I-4265.

25 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 11(2)(c).

26 Ibid reg 11(2)(d). See note 24 supra.

27 Ibid reg 11(1).

UPDATE

228 Right of admission to the United Kingdom

TEXT AND NOTES 1-10--SI 2000/2326 reg 12 now Immigration (European Economic Area) Regulations 2006, SI 2006/1003, reg 11.

NOTE 3--SI 2000/2326 regs 24, 25 now SI 2006/1003 regs 22, 23 (amended by SI 2009/1117).

NOTE 4--The primary carer of a person receiving education also has a right of residence, irrespective of whether the carer is financially self-sufficient: Case C-480/08 *Teixeira v Lambeth LBC* [2010] All ER (D) 249 (Feb), ECJ.

NOTE 10--A member state may not send back at the border a third country national, who is married to a national of a member state and who is not in possession of a valid identity card or passport or, if necessary, a visa, where he is able to prove his identity and the conjugal ties and there is no evidence that he represents a risk to public policy, security or health: Case C-459/99 *Mouvement Contre Le Racisme, L'Antisemitisme et la Xenophobie ASBL (MRAX) v Belgium* [2002] 3 CMLR 681, ECJ. When a worker, after being gainfully employed in another member state, returns to the member state of which he is a national, a third country national who is a member of his family has a right to reside in that member state, even where the worker does not carry on any effective and genuine economic activities: Case C-291/05 *Minister Voor Vreemdelingenzaken en Integratie v Eind* [2008] All ER (EC) 371, ECJ.

TEXT AND NOTES 11, 12--SI 2000/2326 reg 21 now SI 2006/1003 reg 19 (amended by SI 2009/1117).

TEXT AND NOTES 13-21--SI 2000/2326 reg 10 replaced: see SI 2006/1003 regs 7, 8.

NOTE 16--See *OQ (India) v Secretary of State for the Home Department; SM (India) v Secretary of State for the Home Department* (2009) Times, 7 December, CA (court confirmed that European Court of Justice had not cast doubt on its decision in Case 316/85 *Centre public d'aide sociale de Courcelles v Lebon*).

TEXT AND NOTES 22-27--SI 2000/2326 reg 11 replaced: see SI 2006/1003, regs 9, 10.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(7) EUROPEAN ECONOMIC AREA NATIONALS AND THEIR FAMILIES/(ii) Admission/229. Issue of EEA family permit.

229. Issue of EEA family permit.

An entry clearance officer¹ must issue an EEA family permit², free of charge, to a person who applies for one if he is a family member³ of:

- 606 (1) a qualified person⁴; or
- 607 (2) a person who is not a qualified person, where that person will be travelling to the United Kingdom⁵ with the person who has made the application within a year of the date of the application, and will be a qualified person on arrival in the United Kingdom⁶.

However, head (1) above does not apply if the applicant, or the person whose family member he is falls to be excluded from the United Kingdom on grounds of public policy, public security or public health⁷.

1 As to entry clearance and entry clearance officers see para 96 ante.

2 'EEA family permit' means a document issued to a person, in accordance with the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 10 (see para 228 ante) or reg 13, in connection with his admission to the United Kingdom: reg 2.

3 As to the determination of family members see para 227 note 12 ante.

- 4 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 13(1)(a). As to the meaning of 'qualified person' see para 227 ante.
- 5 As to the meaning of 'United Kingdom' see para 5 note 1 ante.
- 6 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 13(1)(b).
- 7 Ibid reg 13(2). As to decisions on the grounds of public policy, security and health see para 226 ante.

UPDATE

229 Issue of EEA family permit

TEXT AND NOTES--SI 2000/2326 reg 13 now Immigration (European Economic Area) Regulations 2006, SI 2006/1003, reg 12 (amended by SI 2009/1117).

NOTE 2--For definition of 'EEA family permit' see now ibid reg 2(1).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(7) EUROPEAN ECONOMIC AREA NATIONALS AND THEIR FAMILIES/(iii) Residence/230. Right of residence.

(iii) Residence

230. Right of residence.

A qualified person¹ is entitled to reside in the United Kingdom², without the requirement for leave to remain under the Immigration Act 1971³, for as long as he remains a qualified person⁴. A family member⁵ of a qualified person is entitled to reside in the United Kingdom, without the requirement for such leave, for as long as he remains the family member of a qualified person⁶. A qualified person and the family member of such a person may reside and pursue economic activity⁷ in the United Kingdom notwithstanding that his application for a residence permit⁸ or residence document⁹, as the case may be, has not been determined by the Secretary of State¹⁰. However, a person may be removed from the United Kingdom if he is a qualified person or the family member of such a person, but the Secretary of State has decided that his removal is justified on the grounds of public policy, public security or public health¹¹.

1 As to the meaning of 'qualified person' see para 227 ante. A member state may not require a job seeker who was given a reasonable period of time to find work to leave at the end of the period if he produces evidence that he is continuing to seek work and has genuine chances of securing it: Case C-344/95 *EC Commission v Belgium (re Treatment of Migrant Workers)* [1997] ECR I-1035, [1997] 2 CMLR 187, ECJ; Case C-292/89 *R v Immigration Appeal Tribunal, ex p Antonissen* [1991] ECR I-745, [1991] 2 CMLR 373, ECJ.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 See para 84 ante.

4 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 14(1).

5 As to the determination of family members see para 227 note 12 ante.

6 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 14(2). EEA nationals and their family members are not required to register with the police: see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 324A (as added); and para 97 ante.

A citizen of the European Community who no longer enjoys a right of residence as a migrant worker in the host member state can, as such a citizen, enjoy a right of residence by direct application of the provisions of the

Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179): see Case C-413/99 *Baumbast v Secretary of State for the Home Department* [2002] All ER (D) 80 (Sep), ECJ.

7 'Economic activity' means activity as a worker or self-employed person, or as a provider or recipient of services: Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 2(1). For the meaning of 'self-employed person' see para 227 note 5 ante. For the meaning of 'provider of services' see para 227 note 6 ante. For the meaning of 'receiver of services' see para 227 note 7 ante.

8 As to the issue of residence permits see para 231 et seq post.

9 As to the issue of residence documents see para 231 et seq post.

10 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 14(3). See Case 48/75 *Re Royer* [1976] ECR 497, sub nom *Belgian State v Royer* [1976] 2 CMLR 619, ECJ; Case 8/77 *Re Sagulo, Brenca and Bakhouch* [1977] ECR 1495, [1977] 2 CMLR 585, ECJ; Case 157/79 *R v Pieck* [1980] ECR 2171, [1980] 3 CMLR 220; and Case 59/85 *Netherlands v Reed* [1986] ECR 1283, [1987] 2 CMLR 448, ECJ. As to the Secretary of State see para 2 ante.

11 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, regs 14(4), 21(3)(b). As to decisions on the grounds of public policy, security and health see para 226 ante.

UPDATE

230-235 Residence

The provisions concerning residence documentation set out in SI 2000/2326 Pt IV (regs 15-20) are now set out in the Immigration (European Economic Area) Regulations 2006, SI 2006/1003, Pt 3 (regs 16-18, regs 17, 18 amended by SI 2009/1117).

230 Right of residence

TEXT AND NOTES--SI 2000/2326 regs 14, 21(3)(b) replaced by the Immigration (European Economic Area) Regulations 2006, SI 2006/1003, regs 13, 14, 19(3)(b) (reg 19(3)(b) substituted by SI 2009/1117). As to the acquisition of the right to reside in the United Kingdom permanently, see reg 15.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(7) EUROPEAN ECONOMIC AREA NATIONALS AND THEIR FAMILIES/(iii) Residence/231. Issue of residence permit and residence document.

231. Issue of residence permit and residence document.

The Secretary of State¹ must issue a residence permit to a qualified person² on application and production of a valid identity card or passport issued by an EEA state³, and the proof that he is a qualified person⁴. The Secretary of State must also issue a residence permit to a family member⁵ of a qualified person (or, where the family member is not an EEA national⁶, a residence document) on application and production of: (1) a valid identity card issued by an EEA state or a valid passport⁷; (2) in the case of a family member who required an EEA family permit⁸ for admission to the United Kingdom⁹, such a permit¹⁰; and (3) in the case of a person not falling within head (2) above, proof that he is a family member of a qualified person¹¹.

However, the Secretary of State is not required to grant a residence permit to:

- 608 (a) a worker whose employment in the United Kingdom is limited to three months and who holds a document from his employer certifying that his employment is so limited¹²;

- 609 (b) a worker who is employed in the United Kingdom but who resides in the territory of an EEA state and who returns to his residence at least once a week¹³;
- 610 (c) a seasonal worker whose contract of employment has been approved by the Department for Education and Skills¹⁴; or
- 611 (d) a provider¹⁵ or recipient of services¹⁶ if the services are to be provided for no more than three months¹⁷.

The Secretary of State may refuse to issue a residence permit or residence document, as the case may be, if the refusal is justified on grounds of public policy, public security or public health¹⁸.

- 1 As to the Secretary of State see para 2 ante.
- 2 As to the meaning of 'qualified person' see para 227 ante.
- 3 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 15(1)(a). For the meaning of 'EEA state' see para 227 note 2 ante.
- 4 Ibid reg 15(1)(b). In the case of a worker, confirmation of the worker's engagement from his employer or a certificate of employment is sufficient proof for these purposes: reg 15(3).
- 5 As to the determination of family members see para 227 note 12 ante.
- 6 For the meaning of 'EEA national' see para 227 ante.
- 7 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 15(2)(a).
- 8 For the meaning of 'EEA family permit' see para 229 note 2 post. As to the issue of EEA family permits see para 229 ante.
- 9 As to the meaning of 'United Kingdom' see para 5 note 1 ante.
- 10 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 15(2)(b).
- 11 Ibid reg 15(2)(c).
- 12 Ibid reg 16(1)(a). The requirement in reg 16(1)(a) to hold a document does not apply to workers coming within the provisions of EEC Council Directive 64/224 (OJ B56, 4.4.64, p 869) concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of intermediaries in commerce, industry and small craft industries: Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 16(2).
- 13 Ibid reg 16(1)(b).
- 14 Ibid reg 16(1)(c). Regulation 16(1)(c) refers to the Department for Education and Employment, which was renamed the Department for Education and Skills in June 2001 (see No 10 Downing Street Press Release: Delivering Effective Government (8 June 2001)).
- 15 For the meaning of 'provider of services' see para 227 note 6 ante.
- 16 For the meaning of 'receiver of services' see para 227 note 7 ante.
- 17 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 16(1)(d).
- 18 Ibid reg 22(1). As to decisions on the grounds of public policy, security and health see para 226 ante.

UPDATE

230-235 Residence

The provisions concerning residence documentation set out in SI 2000/2326 Pt IV (regs 15-20) are now set out in the Immigration (European Economic Area) Regulations 2006, SI 2006/1003, Pt 3 (regs 16-18, regs 17, 18 amended by SI 2009/1117).

231 Issue of residence permit and residence document

TEXT AND NOTES--The removal of a person from the United Kingdom under the Immigration (European Economic Area) Regulations 2006, SI 2006/1813 invalidates a registration certificate, residence card, document certifying permanent residence or permanent residence card held by that person or an application made by that person for such a certificate, card or document: reg 20(1A) (added by SI 2009/1117).

NOTE 11--A member state cannot refuse to issue a residence permit and issue an expulsion order against a third country national who is able to prove his identity and his marriage to a member state national, either because he entered the territory unlawfully or his visa expired before he applied for a residence permit: Case C-459/99 *Mouvement Contre Le Racisme, L'Antisemitisme et la Xenophobie ASBL (MRAX) v Belgium* [2002] 3 CMLR 681, ECJ.

TEXT AND NOTE 18--SI 2000/2326 reg 22(1) now SI 2006/1003, reg 20(1).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(7) EUROPEAN ECONOMIC AREA NATIONALS AND THEIR FAMILIES/(iii) Residence/232. Form of residence permit and residence document.

232. Form of residence permit and residence document.

The residence permit¹ issued to a worker or a worker's family member² who is an EEA national³ must be in the prescribed form⁴. A residence document⁵ issued to a family member who is not an EEA national may take the form of a stamp in that person's passport⁶.

1 As to the issue of residence permits see para 231 ante.

2 As to the determination of family members see para 227 note 12 ante.

3 For the meaning of 'EEA national' see para 227 ante.

4 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 17(1). As to the prescribed form of residence permits see reg 17(1).

5 As to the issue of residence documents see para 231 ante.

6 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 17(2).

UPDATE

230-235 Residence

The provisions concerning residence documentation set out in SI 2000/2326 Pt IV (regs 15-20) are now set out in the Immigration (European Economic Area) Regulations 2006, SI 2006/1003, Pt 3 (regs 16-18, regs 17, 18 amended by SI 2009/1117).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(7) EUROPEAN ECONOMIC AREA NATIONALS AND THEIR FAMILIES/(iii) Residence/233. Duration of residence permit or residence document.

233. Duration of residence permit or residence document.

A residence permit¹ is valid for at least five years from the date of issue². However, in the case of a worker who is to be employed in the United Kingdom³ for less than twelve but more than three months, the validity of the residence permit may be limited to the duration of the employment⁴. In the case of a seasonal worker who is to be employed for more than three months, the validity of the residence permit may be limited to the duration of the employment if the duration is indicated in the document confirming the worker's engagement or in a certificate of employment⁵. In the case of a provider⁶ or recipient of services⁷, the validity of the residence permit may be limited to the period during which the services are to be provided⁸. In the case of a student⁹, the residence permit is to be valid for a period which does not exceed the duration of the course of study, but where the course lasts for more than one year the validity of the residence permit may be limited to one year¹⁰. In the case of a retired person¹¹ or a self-sufficient person¹², the Secretary of State¹³ may, if he deems it necessary, require the revalidation of the residence permit at the end of the first two years of residence¹⁴. The validity of a residence permit is not affected by absence from the United Kingdom for periods of no more than six consecutive months or absence from the United Kingdom on military service¹⁵.

The family member¹⁶ of an EEA national¹⁷ is entitled to a residence permit or residence document¹⁸ of the same duration as the residence permit granted to the qualified person¹⁹ of whose family he is a member²⁰.

1 As to the issue of residence permits see para 231 ante.

2 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 18(1). Regulation 18(1) is expressed to be subject to reg 18(2)-(7) (see the text and notes 4-15 infra), reg 20 (see the text and notes 16-20 infra), reg 22(2) (see paras 234-235 post).

3 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

4 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 18(2).

5 Ibid reg 18(3).

6 For the meaning of 'provider of services' see para 227 note 6 ante.

7 For the meaning of 'receiver of services' see para 227 note 7 ante.

8 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 18(4).

9 For the meaning of 'student' see para 227 note 10 ante.

10 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 18(5).

11 For the meaning of 'retired person' see para 227 note 9 ante.

12 For the meaning of 'self-sufficient person' see para 227 note 8 ante.

13 As to the Secretary of State see para 2 ante.

14 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 18(6).

15 Ibid reg 18(7). For the meaning of 'military service' see para 227 note 11 ante.

16 As to the determination of family members see para 227 note 12 ante.

17 For the meaning of 'EEA national' see para 227 ante.

- 18 As to the issue of residence documents see para 231 ante.
- 19 As to the meaning of 'qualified person' see para 227 ante.
- 20 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 20.

UPDATE

230-235 Residence

The provisions concerning residence documentation set out in SI 2000/2326 Pt IV (regs 15-20) are now set out in the Immigration (European Economic Area) Regulations 2006, SI 2006/1003, Pt 3 (regs 16-18, regs 17, 18 amended by SI 2009/1117).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(7) EUROPEAN ECONOMIC AREA NATIONALS AND THEIR FAMILIES/(iii) Residence/234. Renewal of residence permit or residence document.

234. Renewal of residence permit or residence document.

A residence permit¹ must be renewed on application². However, on the occasion of the first renewal of a worker's residence permit the validity may be limited to one year if the worker has been involuntarily unemployed in the United Kingdom³ for more than one year⁴. In the case of a student⁵ whose first residence permit is limited to one year⁶, renewal may be for periods limited to one year⁷.

The residence permit or residence document⁸ of a family member⁹ of an EEA national¹⁰ is subject to the same terms as to renewal as the residence permit granted to the qualified person¹¹ of whose family he is a member¹².

The Secretary of State¹³ may refuse to renew a residence permit or residence document if the refusal is justified on grounds of public policy, public security or public health¹⁴, or the person to whom the residence permit or residence document was issued is not, or has ceased to be, a qualified person, or is not, or has ceased to be, the family member of a qualified person¹⁵.

1 As to the issue of residence permits see para 231 ante.

2 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 19(1). Regulation 19(1) is expressed to be subject to reg 19(2), (3) (see the text and notes 3-7 infra), reg 20 (see the text and notes 8-12 infra), reg 22(2) (see the text and notes 12-15 infra; and para 235 post). As to the duration of residence permits see para 233 ante.

3 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

4 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 19(2).

5 For the meaning of 'student' see para 227 note 10 ante.

6 I.e. by virtue of the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 18(5): see para 233 ante.

7 Ibid reg 19(3).

8 As to the issue of residence documents see para 231 ante.

9 As to the determination of family members see para 227 note 12 ante.

- 10 For the meaning of 'EEA national' see para 227 ante.
- 11 As to the meaning of 'qualified person' see para 227 ante.
- 12 See the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 20. As to the duration of residence documents see para 233 ante.
- 13 As to the Secretary of State see para 2 ante.
- 14 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 22(2)(a). As to decisions on the grounds of public policy, security and health see para 226 ante.
- 15 Ibid reg 22(2)(b).

UPDATE

230-235 Residence

The provisions concerning residence documentation set out in SI 2000/2326 Pt IV (regs 15-20) are now set out in the Immigration (European Economic Area) Regulations 2006, SI 2006/1003, Pt 3 (regs 16-18, regs 17, 18 amended by SI 2009/1117).

234 Renewal of residence permit or residence document

TEXT AND NOTES 13-15--SI 2000/2326 reg 22(2) now Immigration (European Economic Area) Regulations 2006, SI 2006/1003, reg 20(2), (3).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(7) EUROPEAN ECONOMIC AREA NATIONALS AND THEIR FAMILIES/(iii) Residence/235. Revocation of residence permit, residence document or EEA family permit.

235. Revocation of residence permit, residence document or EEA family permit.

The Secretary of State¹ may revoke a residence permit² or residence document³ if the revocation is justified on grounds of public policy, public security or public health⁴, or the person to whom the residence permit or residence document was issued is not, or has ceased to be, a qualified person⁵, or is not, or has ceased to be, the family member⁶ of a qualified person⁷.

An immigration officer may, at the time of the arrival in the United Kingdom⁸ of a person who is not an EEA national⁹, revoke that person's residence document if he is not at that time the family member of a qualified person¹⁰. An immigration officer may, at the time of a person's arrival in the United Kingdom, revoke that person's EEA family permit¹¹ if the revocation is justified on grounds of public policy, public security or public health¹², or the person is not at that time the family member of a qualified person¹³.

- 1 As to the Secretary of State see para 2 ante.
- 2 As to the issue of residence permits see para 231 ante.
- 3 As to the issue of residence documents see para 231 ante.

4 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 22(2)(a). As to decisions on the grounds of public policy, security and health see para 226 ante.

5 As to the meaning of 'qualified person' see para 227 ante.

6 As to the determination of family members see para 227 note 12 ante.

7 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 22(2)(b).

8 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

9 For the meaning of 'EEA national' see para 227 ante.

10 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 22(3).

A non-EEA spouse in the United Kingdom loses the benefit of European law if the parties divorce or if the qualified person leaves the United Kingdom permanently (*R v Secretary of State for the Home Department, ex p Sandhu* [1983] 3 CMLR 131, [1983] Imm AR 61, CA; affd *Re Sandhu* (1985) Times 10 May, HL), or if the qualified person is removed or deported (*R v Secretary of State for the Home Department, ex p Botta* [1987] 2 CMLR 189, [1987] Imm AR 80), but not if they separate (ie do not divorce) and the qualified person remains in the United Kingdom (Case 267/83 *Diatta v Land Berlin* [1985] ECR 567, [1986] 2 CMLR 164, ECJ). See also Case C-413/99 *Baumbast v Secretary of State for the Home Department* [2002] All ER (D) 80 (Sep), ECJ.

11 For the meaning of 'EEA family permit' see para 229 note 2 ante. As to the issue of EEA family permits see para 229 ante.

12 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 22(4)(a).

13 Ibid reg 22(4)(b).

UPDATE

230-235 Residence

The provisions concerning residence documentation set out in SI 2000/2326 Pt IV (regs 15-20) are now set out in the Immigration (European Economic Area) Regulations 2006, SI 2006/1003, Pt 3 (regs 16-18, regs 17, 18 amended by SI 2009/1117).

235 Revocation of residence permit, residence document or EEA family permit

TEXT AND NOTES--SI 2000/2326 reg 22 now Immigration (European Economic Area) Regulations 2006, SI 2006/1003, reg 20 (amended by SI 2009/1117).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(7) EUROPEAN ECONOMIC AREA NATIONALS AND THEIR FAMILIES/(iv) Removal/236. Removal from the United Kingdom.

(iv) Removal

236. Removal from the United Kingdom.

A person may be removed from the United Kingdom¹:

612 (1) if he is not, or has ceased to be a qualified person², or the family member³ of a qualified person⁴;

613 (2) if he is a qualified person or the family member of such a person, but the Secretary of State⁵ has decided that his removal is justified on the grounds of public policy, public security or public health⁶.

1 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 As to the meaning of 'qualified person' see para 227 ante.

3 As to the determination of family members see para 227 note 12 ante.

4 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 21(3)(a). As to the administrative provisions in relation to the control of entry under the Immigration Act 1971 and the Immigration and Asylum Act 1999 see the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, regs 25(2), (3), 26. See also para 152 et seq ante.

5 As to the Secretary of State see para 2 ante.

6 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 21(3)(b). As to decisions on the grounds of public policy, security and health see para 226 ante.

UPDATE

236 Removal from the United Kingdom

TEXT AND NOTES--SI 2000/2326 reg 21 now Immigration (European Economic Area) Regulations 2006, SI 2006/1003, reg 19 (reg 19 amended, reg 24A added by SI 2009/1117). A deportation or exclusion order must remain in force unless it is revoked by the Secretary of State under SI 2006/1003 reg 24A: reg 24A(1). A person who is subject to a deportation or exclusion order may apply to the Secretary of State to have it revoked if the person considers that there has been a material change in the circumstances that justified the making of the order: reg 24A(2). An application under 24A(2) must set out the material change in circumstances relied on by the applicant and may only be made whilst the applicant is outside the United Kingdom: reg 24A(3). On receipt of an application under reg 24A(2), the Secretary of State is to revoke the order if the Secretary of State considers that the order can no longer be justified on grounds of public policy, public security or public health in accordance with reg 21 (see PARA 226): reg 24A(4). The Secretary of State will take a decision on an application under reg 24A(2) no later than six months after the date on which the application is received: reg 24A(5).

NOTE 4--Now *ibid* regs 23, 24 (amended by SI 2009/1117).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/3. IMMIGRATION/(7) EUROPEAN ECONOMIC AREA NATIONALS AND THEIR FAMILIES/(v) Settlement/237. Settlement of EEA nationals and their families.

(v) Settlement

237. Settlement of EEA nationals and their families.

Any person¹ who has been issued² with a residence permit³ or a residence document⁴ valid for five years and who has remained in the United Kingdom⁵ for four years and continues to do so may, on application, have his residence permit or residence document indorsed to show

permission to remain in the United Kingdom indefinitely⁶. In addition, the following persons will be permitted to remain in the United Kingdom indefinitely⁷:

- 614 (1) an EEA national⁸ who has been continuously resident in the United Kingdom for at least three years, has been in employment in the United Kingdom or any other member state of the EEA for the preceding 12 months, and has reached the age of entitlement to a state retirement pension⁹;
- 615 (2) an EEA national who has ceased to be employed owing to a permanent incapacity for work arising out of an accident at work or an occupational disease entitling him to a state disability pension¹⁰;
- 616 (3) an EEA national who has been continuously resident in the United Kingdom for at least two years, and who has ceased to be employed owing to a permanent incapacity for work¹¹;
- 617 (4) a member of the family¹² of an EEA national¹³ to whom head (1), head (2) or head (3) above applies¹⁴;
- 618 (5) a member of the family of an EEA national¹⁵ who dies during his working life after having resided continuously in the United Kingdom for at least two years, or whose death results from an accident at work or an occupational disease¹⁶.

For the purposes of the Immigration Act 1971¹⁷ and the British Nationality Act 1981¹⁸, the following are to be regarded as persons who are in the United Kingdom without being subject under the immigration laws to any restriction on the period for which they may remain:

- 619 (a) a self-employed person¹⁹ who has ceased activity²⁰;
- 620 (b) the family member²¹ of a self-employed person who has ceased activity and who was residing with that person in the United Kingdom immediately before that person ceased his activity in the United Kingdom²²;
- 621 (c) a family member²³ of a self-employed person who has died²⁴;
- 622 (d) a person who has rights under the EEC Commission Regulation on the right of workers to remain in the territory of a member state after having been employed in that state²⁵;
- 623 (e) a person who has been granted permission to remain in the United Kingdom indefinitely²⁶.

However, a qualified person²⁷ or family member who is not mentioned in heads (a) to (e) above is not, by virtue of his status as a qualified person or the family member of a qualified person, to be so regarded for those purposes²⁸.

1 Ie other than a student: Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) (the 'Immigration Rules') para 255 (substituted by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 23).

2 Ie under the Immigration (European Economic Area) Order 1994, SI 1994/1895 (revoked) or the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended).

3 As to residence permits see para 231 et seq ante.

4 As to residence documents see para 231 et seq ante.

5 Ie in accordance with the provisions of the Immigration (European Economic Area) Order 1994, SI 1994/1895 (revoked) or the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended).

6 Immigration Rules para 255 (as substituted: see note 1 supra). For the purpose of calculating the four-year period in the case of a Swiss national who was issued with a residence permit under the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended) and, prior to 1 June 2002, had remained in the United Kingdom in accordance with the Immigration Rules and in a capacity which would have entitled him to

apply for indefinite leave to remain after a period of four years in that capacity in the United Kingdom, the period during which he remained in the United Kingdom prior to 1 June 2002 is treated as a period during which he remained in accordance with the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended): Immigration Rules para 255A (added by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 15).

7 In accordance with the EEC Commission Regulation 1251/70 (OJ L142, 30.6.70, p 24) on the right of workers to remain in the territory of a member state after having been employed in that state: Immigration Rules para 257 (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 25(a)).

8 For the purposes of the Immigration Rules, 'EEA national' means a national of a state other than the United Kingdom which is a contracting party to the Agreement on the European Economic Area (Oporto, 2 May 1992; OJ L1, 3.1.94, p 3; Cm 2073): Immigration Rules paras 6, 257 (para 6 amended by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 1(a); and the Immigration Rules para 257 amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 25(d)). A Swiss national is treated as an EEA national for the purposes of the Immigration Rules: see the Immigration Rules para 257A (added by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 17). For the meaning of 'EEA national' for the purposes of the Immigration (European Economic Area) Regulations 2000, SI 2000/2326 (as amended) see para 227 ante.

9 Immigration Rules para 257(i).

10 Immigration Rules para 257(ii).

11 Immigration Rules para 257(iii).

12 A 'member of the family' is a family member as defined in the Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 6 (as amended) (see para 227 ante), or a person whom it has been decided to treat as a family member in accordance with the principles set out in reg 10 (as amended) (see para 228 ante): Immigration Rules para 257 (as amended: see note 8 supra). So far as the Immigration Rules para 257 (as amended) relates to a Swiss national, no account is taken of any period of residence before 1 June 2002, a cessation of employment before that date, or death before that date: Immigration Rules para 257 (amended by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 16(b)). The fiancé or fiancée of an EEA national in the United Kingdom is treated as the fiancé or fiancée of a person present and settled there and is eligible for settlement on marriage: see the Immigration Rules para 290A (as added); and para 119 ante.

13 For the meaning of 'EEA national' see note 8 supra. However, for these purposes, 'EEA national' also includes a national of the United Kingdom where the conditions set out in Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 11 (see para 228 ante) are satisfied, and a Swiss national: Immigration Rules para 257 (as amended (see note 8 supra); and further amended by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 16(a)).

14 Immigration Rules para 257(iv) (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 25(b)).

15 For the meaning of 'EEA national' see note 8 supra. For these purposes, 'EEA national' also includes a national of the United Kingdom where the conditions set out in Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 11 (see para 228 ante) are satisfied, and a Swiss national: Immigration Rules para 257 (as amended (see note 8 supra); and further amended by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 16(a)).

16 Immigration Rules para 257(v) (amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 25(c)).

17 In the Immigration Act 1971: see para 83 et seq ante.

18 In the British Nationality Act 1981: see para 5 et seq ante.

19 For the meaning of 'self-employed person' see para 227 note 5 ante.

20 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 8(1)(a).

21 As to the determination of family members see para 227 note 12 ante.

22 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 8(1)(b).

23 In a family member to whom *ibid* reg 5(4) applies: see para 227 ante.

- 24 Ibid reg 8(1)(c).
- 25 Ibid reg 8(1)(d). The text refers to EEC Commission Regulation 1251/70 (OJ L142, 30.6.70, p 24) on the right of workers to remain in the territory of a member state after having been employed in that state.
- 26 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 8(1)(e).
- 27 For the meaning of 'qualified person' see para 227 ante.
- 28 Immigration (European Economic Area) Regulations 2000, SI 2000/2326, reg 8(2). See *R v Secretary of State for the Home Department, ex p Sahota*; *R v Secretary of State for the Home Department, ex p Zeghraba* [1999] QB 597, [1997] 3 FCR 776, CA (spouse of European Community worker exercising right of free movement not entitled to indefinite leave to remain in the United Kingdom).

UPDATE

237 Settlement of EEA nationals and their families

TEXT AND NOTES--As to leave, or refusal of leave, to enter or remain as the primary carer or relative of an EEA national self-sufficient child see the Immigration Rules paras 257C-257E (added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 164) para 2; Immigration Rules paras 257C, 257D amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1053) paras 9, 10).

TEXT AND NOTES 1-16--Immigration Rules paras 255, 255A, 257 deleted: Statement of Changes in Immigration Rules (HC Paper (2005-06) no 1053) paras 4, 6.

TEXT AND NOTES 17-28--SI 2000/2326 replaced: Immigration (European Economic Area) Regulations 2006, SI 2006/1003 (amended by SI 2007/3224, SI 2009/1117). As to the acquisition of the right to reside in the United Kingdom permanently see SI 2006/1003 reg 15.

To entitle a family member to leave to remain, it is required that the deceased had resided continuously in the United Kingdom for two years immediately preceding his death: Case C-257/00 *Givane v Secretary of State for the Home Department* [2003] 1 CMLR 587, ECJ.

NOTE 25--EC Commission Regulation 1251/70: repealed by EC Commission Regulation 635/2006 (OJ L112 26.4.2006 p 9); see now art 17 of European Parliament and EC Council Directive 2004/38 (OJ L158 30.4.2004 p 77) on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(1) CLAIMS FOR ASYLUM/238. Asylum and refugees.

4. ASYLUM

(1) CLAIMS FOR ASYLUM

238. Asylum and refugees.

An asylum-seeker is a person seeking recognition as a refugee and consequent leave to remain in the United Kingdom. A claim for asylum is generally defined as a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention¹ for the claimant to be removed from, or required to leave, the United Kingdom². All asylum claims are to be

determined by the Secretary of State³ in accordance with the United Kingdom's obligations under the Refugee Convention⁴. Every asylum claim made by a person at a port or airport in the United Kingdom is referred by the immigration officer to the Secretary of State for determination⁵. Until an asylum claim has been determined or the Secretary of State has issued a certificate for the claimant's removal to a safe third country⁶, no action may be taken to remove the claimant or his dependants from the United Kingdom⁷.

A person is to be granted asylum in the United Kingdom if the Secretary of State is satisfied that: (1) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom⁸; (2) he is a refugee as defined by the Refugee Convention; and (3) refusing his claim would result in his being required to go (whether immediately or after the time limited by an existing leave to enter or remain), in breach of the Refugee Convention, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group⁹. A claim that does not meet these criteria will be refused¹⁰. If the Secretary of State decides to grant asylum to a person who has sought leave to enter, the Secretary of State (and not an immigration officer) will grant leave to enter¹¹. If the Secretary of State grants asylum to a person who has been given leave to enter on other grounds (whether or not the leave has expired) or to a person who has entered without leave, the Secretary of State will vary the existing leave or grant leave to remain¹². Where a person who is seeking leave to enter is refused asylum, the Secretary of State (and not an immigration officer) will consider whether there are any other grounds for admission¹³ and if there are not, will refuse the person leave to enter¹⁴ or if he has previously been refused leave to enter will again refuse leave to enter¹⁵. Where a person in the United Kingdom is notified that asylum has been refused he may, if he is liable to removal as an illegal entrant¹⁶, removal under the Immigration and Asylum Act 1999¹⁷, or deportation¹⁸, at the same time be notified of removal directions, served with a notice of intention to make a deportation order, or served with a deportation order, as appropriate¹⁹. However, where the Secretary of State determines that a person is not entitled to asylum as a refugee he may nevertheless grant him leave to enter or remain on an exceptional basis outside the Immigration Rules²⁰.

1 Ibid relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906). The Refugee Convention is not directly incorporated into United Kingdom law, but asylum-seekers have a legitimate expectation that its provisions will be followed: see *R v Uxbridge Magistrates' Court, ex p Adimi* [1999] 4 All ER 520, [1999] Imm AR 560, DC.

The prosecution of a person who enters the United Kingdom using false papers, but who is nevertheless entitled to claim asylum, is prohibited by the Refugee Convention art 31: see *R v Uxbridge Magistrates' Court, ex p Adimi* supra. Following this case, the Immigration and Asylum Act 1999 s 31 was enacted, which provides that it is a defence for a refugee charged with certain offences relating to forgery, deception and falsification of documents to show that, having come to the United Kingdom directly from a country where his life or freedom was threatened (within the meaning of the Refugee Convention), he: (1) presented himself to the authorities in the United Kingdom without delay; (2) showed good cause for his illegal entry or presence; and (3) made a claim for asylum as soon as was reasonably practicable after his arrival in the United Kingdom: Immigration and Asylum Act 1999 s 31(1), (3).

2 Ibid s 167(1). As to the meaning of 'United Kingdom' see para 5 note 1 ante. For the purposes of the Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) ('the Immigration Rules'), an asylum claimant is a person who claims that it would be contrary to the United Kingdom's obligations under the Refugee Convention for him to be removed from, or required to leave, the United Kingdom: Immigration Rules para 327.

In the Immigration and Asylum Act 1999 Pt V (ss 82-93) (immigration advisers and immigration service providers), Pt VI (ss 94-127) (as amended) (support for asylum-seekers), s 141 (fingerprinting), and the Immigration Act 1971 s 25 (as amended) (assisting illegal entry and harbouring), a claim for asylum includes reference to the United Kingdom's obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) in addition to the Refugee Convention: see the Immigration Act 1971 s 25(1D) (added by the Immigration and Asylum Act 1999 s 29(1), (3)); and the Immigration and Asylum Act 1999 ss 82(1), 94(1). As to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 122 et seq.

3 As to the Secretary of State see para 2 ante.

4 Immigration Rules para 328.

5 Immigration Rules para 328.

The duty of the immigration officer to refer asylum claims to the Secretary of State applies where it appears to him from information given by a person that he may be eligible for asylum, although no explicit claim is made; not all claimants know about the Refugee Convention so might not use the words 'asylum' or 'refugee' and if there is doubt as to whether a claim for asylum has been made, the benefit of the doubt should be given in all cases: *Asylum Policy Instructions* Part 1 (Applications for asylum) Chapter 1 section 1 paragraph 1.2.

6 Certificates for removal to a safe third country are made under the Immigration and Asylum Act 1999 ss 11, 12: see paras 181 ante, 241 post. See also the Immigration Rules para 345 (substituted by Statement of Changes in Immigration Rules (Cmnd 3365) (1996) para 15; and amended by Statement of Changes in Immigration Rules (Cmnd 4851) (2000) para 47).

7 Immigration and Asylum Act 1999 s 15(1); Immigration Rules para 329 (substituted by Statement of Changes in Immigration Rules (Cmnd 3365) (1996) para 8; and amended by Statement of Changes in Immigration Rules (Cmnd 4851) (2000) para 43). The Immigration and Asylum Act 1999 s 15(1) does not prevent directions for the claimant's removal being given during the relevant period, or a deportation order being made against him during that period, but no such direction or order is to have effect during that period: s 15(2), (3).

8 Claims for asylum must normally be made at a port of entry or inside the United Kingdom. Asylum cannot be claimed at a British embassy in the country or territory of feared persecution. Although such places may be within British jurisdiction, claimants are not outside the territory of the country of nationality or former habitual residence (see para 239 post): see *Secretary of State for the Home Department v X (a Chilean Citizen)* [1978] Imm AR 73, IAT; *Abedom Tekle & Russo Ockbazghi v Visa Officer, Prague* [1986] Imm AR 71, IAT. See also *R v Secretary of State for the Home Department, ex p Sriharan and Marianayagam* [1992] Imm AR 184, QBD. The United Kingdom's practice gives entry clearance officers a discretion to accept claims for asylum at overseas posts where claimants are refugees and have close ties with the United Kingdom (although they must be outside their own country); such claims are sent to the Home Office for consideration: see the *Asylum Policy Instructions* Part 1 (Applications for asylum) Chapter 2 section 1.

9 Immigration Rules para 334.

10 Immigration Rules para 336.

11 Immigration Rules para 330; Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 2(1) (which allows for the Secretary of State to grant leave to enter to persons to whom he grants asylum). Although the Immigration Rules para 330 still refers to a grant of limited leave, the practice has been since 27 July 1998 to grant recognised refugees immediate indefinite leave to enter or remain subject to cases where the claimant has committed a serious criminal offence and the Secretary of State wishes to have more time to consider whether his continued presence in the United Kingdom is conducive to the public good: *Home Office Policy on Grants of Limited and Indefinite Leave to Remain to Recognised Refugee* (Immigration and Nationality Directorate Letter to Asylum Aid, 18 March 1998) (reproduced in Butterworths Immigration Law Service para 2B[13]). Leave to enter can also be granted by an immigration officer following a grant of asylum by the Secretary of State: see the Immigration Act 1971 s 4(1) (as amended) (see para 86 ante); and the Immigration Rules para 330.

12 Immigration Rules para 335. The Immigration Rules para 335 refers to the grant of limited leave, but the practice is to grant indefinite leave: see note 11 supra.

13 See the Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 2(4).

14 Immigration Rules para 331 (substituted by Statement of Changes in Immigration Rules (Cmnd 3365) (1996) para 9; and amended by Statement of Changes in Immigration Rules (HC Paper (1999-2000) no 704) para 16); Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 2(1). An immigration officer can also refuse leave to enter to a person who has been refused asylum by the Secretary of State: see the Immigration Act 1971 s 4(1) (as amended) (see para 86 ante); and the Immigration Rules para 331 (as substituted and amended).

15 Immigration Rules para 332; Immigration (Leave to Enter) Order 2001, SI 2001/2590, art 2(1). An immigration officer can also refuse leave to enter to a person who has previously been refused leave to enter and who has been refused asylum by the Secretary of State: see the Immigration Act 1971 s 4(1) (as amended) (see para 86 ante); and the Immigration Rules para 332.

16 See paras 151-152 ante.

17 le removal under the Immigration and Asylum Act 1999 s 10: see para 86 ante.

18 See para 160 ante.

19 Immigration Rules para 338 (amended by Statement of Changes in Immigration Rules (Cmnd 4851) (2000) para 45).

20 le the Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395). A grant of exceptional leave to enter or remain would be appropriate where the Secretary of State determines that although a claim does not meet the criteria for asylum as a refugee under the Immigration Rules para 334 (see the text and notes 8-9 supra), it would be contrary to the United Kingdom's obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) for him to be removed from or required to leave the United Kingdom or where for compassionate or practical reasons he should not be removed from or required to leave the United Kingdom. Exceptional leave to enter or remain is usually granted for four years in the first instance: see *New measures for dealing with asylum claims* (Asylum and Appeals Policy Directorate Letter, April 1999 (reproduced in Butterworths Immigration Law Service para 2B[14])). Furthermore, it is Home Office policy to grant exceptional leave where an asylum claim has been outstanding for seven years: see *Asylum Policy Instructions* Part 1 (Applications for asylum) Chapter 5 Section 1 paragraph 2.1. On an application for judicial review of the Secretary of State's decision not to grant an asylum-seeker exceptional leave to remain, where the applicant claims that he will suffer ill-treatment if returned to his country of origin, the court must consider the underlying factual material in order to determine whether the Secretary of State's decision was irrational: *R v Secretary of State for the Home Department, ex p Turgut* [2001] 1 All ER 719, [2000] Imm AR 306, CA. In deciding whether to grant exceptional leave to a refused asylum claimant whose appeal has been dismissed on the grounds that he is not a refugee, the Secretary of State is bound by the factual findings of the adjudicator who heard evidence on the appeal, unless they are perverse (see *Secretary of State for the Home Department v Danaie* [1998] Imm AR 84, CA (Secretary of State bound by adjudicator's factual finding that Iranian asylum-seeker was an adulterer)), or unless they relate solely to country conditions (*R v Secretary of State for the Home Department, ex p Alakesan* [1997] Imm AR 315; *Elhasoglu v Secretary of State for the Home Department* [1997] Imm AR 380, CA). If an applicant for exceptional leave to remain is involved in legal proceedings, the applicant's right to equality of arms must be properly considered: *R v Secretary of State for the Home Department, ex p Quaquah* [1999] All ER (D) 1437.

UPDATE

238-244 Claims for Asylum

Education about the nature of the asylum process may now be provided to asylum-seekers through programmes of induction arranged by the Secretary of State: see further PARA 238A.

238 Asylum and refugees

TEXT AND NOTES--References to the Refugee Convention are now to the Geneva Convention: Immigration Rules paras 327, 328, 334 (Immigration Rules paras 327, 334 substituted, para 328 amended, by Statement of Changes in Immigration Rules (Cm 6918) (2006) paras 2-4). 'Geneva Convention' means the United Nations Convention and Protocol relating to the Status of Refugees (see NOTE 1): Immigration Rules para 352G(a) (Immigration Rules para 352G added by Statement of Changes in Immigration Rules (Cm 6918) (2006) para 16).

As to reception conditions for asylum applicants who are not nationals of a member state of the European Union, see the Immigration Rules Pt 11B (paras 357-361) (added by Statement of Changes in Immigration Rules (HC Paper (2004-05) no 194) para 3).

As to revocation or refusal to renew a grant of asylum see Immigration Rules paras 339A, 339B (Immigration Rules paras 339A-339Q added by Statement of Changes in Immigration Rules (Cm 6918) (2006) para 6); as to safeguards where a person's refugee status is being reconsidered see Immigration Rules para 339BA (added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) para 10); as to

grant of, exclusion from, refusal or revocation of, humanitarian protection see Immigration Rules paras 339C-339HA (Immigration Rules para 339HA added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) para 11); as to consideration of asylum application see Immigration Rules paras 339I-339N (Immigration Rules paras 339IA, 339JA, 339MA added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) paras 12, 14, 16; Immigration Rules paras 339J, 339M amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) paras 13, 15; Immigration Rules para 339M amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 420)); as to sur place claims see Immigration Rules paras 339P; as to residence permits see Immigration Rules para 339Q (amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 28) para 1).

The procedures set out in the Immigration Rules apply to the consideration of asylum and humanitarian protection: Immigration Rules para 326A (added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) para 1). As to fresh claims see Immigration Rules para 353 (amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 420)). Consideration of further submissions (but not those made overseas) are also subject to such procedures: Immigration Rules para 353A (added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) para 28). As to safeguards in relation to applications for asylum see further Immigration Rules paras 333-333C (added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) paras 5-8); Immigration Rules para 333C substituted by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 420)); and as to information to be provided to asylum applicants see Immigration Rules para 357A (added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) para 29). As to provision for a personal interview before a decision is made on an asylum application see Immigration Rules paras 339NA-339ND (added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) paras 17-22).

As to presumption that asylum-seekers, but not other immigration appellants, will be anonymised, see *Practice Note (Court of Appeal: Asylum and Immigration Cases)* [2006] 1 WLR 2461.

A decision that a person's removal is unlawful does not implicitly involve determining into which category, provided for in the Immigration Rules, he falls into: *R (on the application of Boroumand) v Secretary of State for the Home Department* [2010] EWHC 225 (Admin), [2010] All ER (D) 241 (Feb), DC, (exclusion from humanitarian protection).

NOTE 1--The Immigration and Asylum Act 1999 is binding in the United Kingdom irrespective of the fact that it is narrower than the Refugee Convention art 31: *R (on the application of Pepushi) v Crown Prosecution Service* [2004] EWHC 798 (Admin), [2004] All ER (D) 129 (May).

NOTE 2--Immigration Rules para 327 amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) para 2. Every person has the right to make an application for asylum on his own behalf: Immigration Rules para 327A (added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) para 3). As to Secretary of State's duty to ensure that an applicant receives advice as to how and where to make such an application see Immigration Rules para 328A (added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) para 4).

TEXT AND NOTE 4--Reference to Refugee Convention is now to Geneva Convention: Immigration Rules para 328 (amended by Statement of Changes in Immigration Rules (Cm 6918) (2006) para 3).

TEXT AND NOTE 7--1999 Act s 15 repealed: Nationality, Immigration and Asylum Act 2002 s 77(5), Sch 9. Now, while a person's claim for asylum is pending he may not be removed from the United Kingdom in accordance with a provision of the Immigration Acts, or required to leave the United Kingdom in accordance with a provision of the Immigration Acts: 2002 Act s 77(1). 'Claim for asylum' means a claim by a person that it would be contrary to the United Kingdom's obligations under the Refugee Convention to remove him from or require him to leave the United Kingdom, and a person's claim is pending until he is given notice of the Secretary of State's decision on it: s 77(2). However, s 77 does not prevent any of the following while a claim for asylum is pending: (1) the giving of a direction for the claimant's removal from the United Kingdom; (2) the making of a deportation order in respect of the claimant; or (3) the taking of any other interim or preparatory action: s 77(3).

NOTE 7--Immigration Rules para 329 now as substituted by Statement of Changes in Immigration Rules (HC Paper (2003-04) no 1112) para 17.

NOTE 10--Immigration Rules para 336 amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) para 9.

NOTES 14, 15--Immigration Rules paras 331, 332 amended: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 420).

TEXT AND NOTE 16--For 'asylum' read 'his asylum application': Immigration Rules para 338 (amended by Statement of Changes in Immigration Rules (Cm 6918) (2006) para 5).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(1) CLAIMS FOR ASYLUM/238A. Induction.

238A. Induction.

A residence restriction¹ may be imposed on an asylum-seeker, or a dependant of an asylum-seeker², without regard to his personal circumstances if it requires him to reside at a specified location for a period not exceeding 14 days, and the person imposing the residence restriction believes that a programme of induction³ will be made available to the asylum-seeker at or near the specified location⁴.

Where the Secretary of State arranges for the provision of a programme of induction, whether or not he also provides other facilities to persons attending the programme and whether or not all the persons attending the programme are subject to residence restrictions, a local authority⁵ may arrange for or participate in the provision of the programme or other facilities⁶. In particular, a local authority may incur reasonable expenditure, provide services outside its area, provide services jointly with another body, form a company, tender for or enter into a contract, or do anything, including anything listed above, for a preparatory purpose⁷.

1 'Residence restriction' means a restriction imposed under the Immigration Act 1971 Sch 2 para 21 (see PARA 212), or under Sch 3 para 2(5) (see PARA 166): Nationality, Immigration and Asylum Act 2002 s 70(2).

2 'Asylum-seeker' has the meaning given by *ibid* s 18 save that persons under 18 years of age are included for these purposes; 'dependant of an asylum-seeker' means a person who appears to the Secretary of State to be making a claim or application in respect of residence in the United Kingdom by virtue of being a dependant of an asylum-seeker: s 70(3).

3 'Programme of induction' means education about the nature of the asylum process: *ibid* s 70(3).

4 *Ibid* s 70(1).

5 For these purposes 'local authority' means a local authority within the meaning of the Immigration and Asylum Act 1999 s 94 (see PARA 251 NOTE 1): 2002 Act s 70(8)(a).

6 Ibid s 70(5), (6).

7 Ibid s 70(7).

UPDATE

238-244 Claims for Asylum

Education about the nature of the asylum process may now be provided to asylum-seekers through programmes of induction arranged by the Secretary of State: see further PARA 238A.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(1) CLAIMS FOR ASYLUM/239. Meaning of 'refugee'.

239. Meaning of 'refugee'.

A refugee is a person who is outside¹ the country of his or her nationality or former habitual residence² owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion and who is unable or, owing to such fear, unwilling to avail himself of the protection of that country³.

There are subjective and objective elements to a 'well-founded' fear of persecution: the claimant must establish that he has a subjective fear which is objectively well founded⁴. The assessment of future risk is determined by reference to the circumstances prevailing in the country of the claimant's nationality⁵, but the objective facts are not exclusively those known to the claimant or believed by him to be true⁶. The claimant must demonstrate a reasonable degree of likelihood that he will be persecuted for a 'Convention reason' if returned to his own country⁷.

The Refugee Convention does not contain a 'good faith' requirement and it is irrelevant whether the activities relied on in the establishment of a claim are self serving, unreasonable or undertaken in bad faith; however, such factors will be relevant to the assessment of credibility and such claims will be rigorously scrutinised⁸. Similarly, a claim cannot be refused on the grounds that the claimant can avoid the risk of future persecution by refraining from undertaking activities (whether, for example, political or religious, and however unreasonably undertaken). The single question is always whether the claimant has a well-founded fear of persecution⁹.

'Persecution' is not defined in the Refugee Convention. The ordinary dictionary definition ('to pursue with malignancy or injurious action, especially to oppress for holding a heretical opinion or belief') has been applied¹⁰, as has analysis of the term based on human rights law¹¹ which treats breaches of first category rights¹² as always amounting to persecution, breaches of second category rights¹³ as amounting to persecution where unjustified and breaches of third category rights¹⁴ as persecution where systematic and discriminatory¹⁵. There is no requirement that an individual be 'singled out' for persecution¹⁶. Persecution is distinguishable from, but not necessarily inconsistent with, prosecution; but generally fugitives from common law offences are unlikely to be refugees¹⁷. Fear of persecution includes persecution by non-state bodies¹⁸. Persecution implies failure by the state to make protection available and the question is whether the authorities are able to provide a 'sufficiency of protection'¹⁹. In determining this question it is not necessary to eliminate all risk; what is required is a 'practical standard' taking

proper account of the duty owed by a state to its nationals²⁰. In civil war situations where there is no effective state authority a person can still qualify for refugee status²¹, although in such cases the claimant must establish some differential impact 'over and above the risk to life and liberty inherent in the civil war'²².

Persecution must be for reasons of one of the five Refugee Convention grounds. The correct approach to this issue of causation is found in the Convention's fundamental purpose of counteracting discrimination²³. Discrimination is therefore an essential element in Convention persecution²⁴, although conscious discrimination will not always be required²⁵.

Of the five Refugee Convention grounds²⁶, membership of a particular social group has been the most litigated. A particular social group does not require an element of cohesiveness, but refers to groups whose members share a common immutable characteristic and are discriminated against in matters of fundamental human rights²⁷. Examples of such groups include women living in a society which discriminates against them on the grounds of sex²⁸, homosexuals²⁹ and family members³⁰. Although the right to work appears as a fundamental right this does not readily convert into a right of asylum for inability to do a specific job and a body of people linked only by the work they do will not ordinarily constitute a particular social group³¹.

The ground of political opinion must be broadly construed, both because of the prominence given as fundamental rights to the freedoms of thought and conscience, of opinion and expression and of assembly and association and because of the need to construe the term so as to provide protection from harm against non-state agents³². Where the source of persecution is the state, political opinion will include 'any action which is perceived to be a challenge to government authority'³³; in the context of non-state agents a more 'inclusive, multi-sided definition' is needed than one confined to governmental authority in a narrow sense³⁴. Further, political opinion may be either express or imputed³⁵. Conscientious objectors are likely to express political opinions, although their prosecution for failure to perform military service will only give rise to a refugee claim in limited circumstances³⁶.

The Refugee Convention expressly provides for the circumstances in which a refugee ceases to qualify for international protection, including, inter alia, where the claimant has re-availed him or herself of the protection of the country of his or her nationality and where there has been a change in the circumstances which gave rise to refugee status³⁷. However, in practice the cessation clauses are rarely invoked: on recognition refugees are granted indefinite leave to enter or remain³⁸.

The Refugee Convention does not apply to persons who (as at 28 July 1951) were receiving protection or assistance from organs or agencies of the United Nations (other than the United Nations High Commissioner for Refugees)³⁹. Further, the Convention does not apply where there are serious reasons for considering the claimant to have committed war crimes or crimes against peace or humanity⁴⁰, serious non-political crimes outside the country of refuge⁴¹, or to be guilty of acts contrary to the principles and purposes of the United Nations⁴². However, such persons may not be removable because of other international obligations⁴³.

Contracting states are prohibited from expelling or returning ('refouler') refugees in any manner whatsoever to the frontiers of territories where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion⁴⁴. This 'non-refoulement' provision applies both to refugees and to asylum-seekers whose claims are yet to be determined⁴⁵. However, the prohibition may not be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the host state or who, having been convicted of a particularly serious crime, constitutes a danger to the community of that country⁴⁶. In all national security cases refugees (and asylum-seekers) facing expulsion can appeal to the Special Immigration Appeals Commission⁴⁷. A broad meaning is given to national security⁴⁸. However, such persons may not be removable because of other international obligations⁴⁹.

1 A person cannot be a refugee if he is within the territory of his country of nationality or, in the case of a stateless person, his country of habitual residence. See para 238 note 8 ante. However, the combination of a visa requirement for nationals of most refugee-producing countries (see Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) ('the Immigration Rules') Appendix 1 (as amended); and para 96 ante) and carrier sanctions (see currently the Immigration (Carriers' Liability) Act 1987 (prospectively repealed; see paras 203-204 ante) and, as from a day to be appointed, the Immigration and Asylum Act 1999 ss 40-42 (not yet in force)) and exposing carriers to the risk of a £2,000 fine for bringing to the United Kingdom a passenger who does not have, inter alia, a valid passport or visa, makes it less likely that a person will reach the United Kingdom in order to make a claim. In *R v Secretary of State for the Home Department, ex p Yassine* [1990] Imm AR 354, 134 Sol Jo 638 and *R v Uxbridge Magistrates' Court, ex p Adimi* [1999] 4 All ER 520, [1999] Imm AR 560, DC, the Divisional Court acknowledged the need for asylum-seekers to resort to the use of agents and/or false documents in order to travel to assert their claim. It may be inappropriate to draw adverse inferences about the merits of a claim based on the necessary resort to such measures: *R v Naillie* [1993] AC 674, [1993] 2 All ER 782, HL; *R v Secretary of State for the Home Department, ex p Sivakumaran (Jeyanathan)* [1990] Imm AR 80; *Nzamba-Liloneo v Secretary of State for the Home Department* [1993] Imm AR 225, CA. Further, the prosecution of a person who enters the United Kingdom using false papers, but who is nonetheless entitled to claim asylum, is prohibited by the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906) art 31 (see para 238 note 1 ante): *R v Uxbridge Magistrates' Court, ex p Adimi* supra.

2 The country of feared persecution may not be the country of nationality in which case the claimant may be returned to that country: *R v Special Adjudicator, ex p Abudine* [1995] Imm AR 60, QBD. The Refugee Convention art 1A(2) provides expressly that 'the country of his nationality' means each of the countries of which the person is a national, and a person is not deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national. However, the protection of a second country of which a claimant is a national must be effective and not merely formal in order to disqualify the claimant from refugee status: *R (on the application of Milisavljeic) v Immigration Appeal Tribunal* [2001] EWHC 203 (Admin). The Refugee Convention applies also to stateless persons, but statelessness or inability to return to a country of former residence are insufficient to qualify a claimant as a refugee; the claimant must also have a well-founded fear of persecution: *Revenko v Secretary of State for the Home Department* [2001] QB 601, [2000] Imm AR 610, CA. The inability of stateless persons to return may engage other obligations: see the Convention relating to the Status of Stateless Persons (New York, 28 September 1954; TS 41 (1960); Cmd 1098). The meaning of 'country of former habitual residence' (in respect of the Turkish Republic of Northern Cyprus) was considered in *Dag v Secretary of State for the Home Department* [2001] Imm AR 587, IAT.

3 Refugee Convention art 1A(2). The words 'that country' encompass either: (1) any entity which has the obligation in international law to provide the protection envisaged by the Convention; or (2) any entity which in fact provides such protection with the consent of the country of nationality; or (3) any entity which in fact provides such protection with or without a duty under international law and with or without the consent of the country of nationality: *R (on the application of Vallaj) v Secretary of State for the Home Department* [2000] All ER (D) 2449; affd sub nom *Canaj v Secretary of State for the Home Department, Vallaj v Special Adjudicator* [2001] EWCA Civ 782 (protection provided in Kosovo by the United Nations Interim Administration Mission in Kosovo (UNMIK) and the international security presence in Kosovo (KFOR) capable of amounting to protection for the purposes of the Refugee Convention art 1A(2) even though such protection was not being provided by the Federal Republic of Yugoslavia).

4 The subjective element is a genuine fear of persecution. If the risk of persecution is well founded, it may be difficult to refuse a claim simply because a person might not believe persecution will occur: see *Gashi v Secretary of State for the Home Department* [1997] INLR 96. As to the meaning of fear see also *Asuming v Secretary of State for the Home Department* (11 November 1994, unreported), IAT. An historic fear will be insufficient in itself to found a claim since it is the existence of a present fear which is determinative; however, the former may be relevant evidence in the establishment of the latter: *Adan v Secretary of State for the Home Department* [1999] 1 AC 293, [1998] 2 All ER 453, HL. See further *Demirkaya v Secretary of State for the Home Department* [1999] Imm AR 498, CA. Equally, there need not have been any historic fear since events after a person's departure may make him or her a refugee 'sur place': see the *UNHCR Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the status of refugees* (UNHCR 1979, re-edited Geneva 1992) paras 94-96. For an example of a case where there was no past persecution but reliance only on evidence of country conditions see *Drriis v Secretary of State for the Home Department* [1997] Imm AR 346, CA.

5 The human rights background in the claimant's country is important both to the assessment of future risk and credibility of the claim. As to the former, whilst evidence of gross abuses of human rights will not of itself establish a claim, where such evidence substantiates a real risk of ill-treatment a claimant's genuine fear of persecution is likely to be well founded. As to the latter see *Horvath v Secretary of State for the Home*

Department [1999] INLR 7, IAT (affd [2000] INLR 15, CA; [2001] 1 AC 489, [2000] 3 All ER 577, HL); *R (on the application of Adrian Gashi) v Special Adjudicator* [2001] EWHC 691 (Admin).

6 The Refugee Convention encompasses those who have a well-founded fear of persecution because the authorities believe (whether rightly or wrongly) that the individual holds certain political opinions or is likely to commit certain political acts: *Secretary of State for the Home Department v Otchere* [1988] Imm AR 21, IAT; *Asante v Secretary of State for the Home Department* [1991] Imm AR 78, IAT; *Adan v Secretary of State for the Home Department* [1997] 2 All ER 723, [1997] Imm AR 251, CA (revsd on other grounds sub nom *Secretary of State for the Home Department v Adan* [1999] 1 AC 293, [1998] 2 All ER 453, HL); *A-G for Canada v Ward* [1993] 2 SCR 689.

7 *R v Secretary of State for the Home Department, ex p Sivakumaran* [1988] AC 958, [1988] 1 All ER 193, [1988] Imm AR 147, HL; *Fernandez v Government of Singapore* [1971] 2 All ER 691, [1971] 1 WLR 987, HL. Other phrases approved in *R v Secretary of State for the Home Department, ex p Sivakumaran* supra which connote the requisite degree of likelihood for a fear of persecution to be objectively well-founded include 'reasonable chance', 'reasonable degree of likelihood' or 'serious possibility'. In that case Lord Keith of Kinkel appeared to approve the dictum of Stevens J in *Immigration and Naturalisation Service v Cardoza-Fonseca* (1987) 94 L ED 2d 434, US SC, that a one in ten chance of being persecuted could found a well-founded fear of persecution. In determining refugee status, a decision-maker is required to take everything into account and weigh it for what it is worth. Matters should only be excluded from the decision-maker's consideration where there is no serious possibility that the facts are as the asylum-seeker contends: *Karanakaran v Secretary of State for the Home Department* [2000] 3 All ER 449, [2000] Imm AR 271, CA. Where a well-founded fear of persecution is established in (only) part of a country the question arises whether the claimant is able to relocate rather than flee the country. If such an 'internal flight alternative' is reasonable the person is not a refugee. The test of reasonableness is whether it would be unduly harsh to expect the person to relocate: *R v Secretary of State for the Home Department, ex p Robinson* [1998] QB 929, [1997] 4 All ER 210, CA. This question is not to be assessed by reference to any standard of proof as such; rather everything that could have a bearing on the question is to be considered. See *Karanakaran v Secretary of State for the Home Department* supra; *Gnanam v Secretary of State for the Home Department* [1999] Imm AR 436, CA. However, internal flight only arises if the person has a well-founded fear of persecution in his or her home area, or if he or she cannot return there without persecution: *Dyli v Secretary of State for the Home Department* [2000] Imm AR 652, IAT; and see also *Canaj v Secretary of State for the Home Department, Vallaj v Special Adjudicator* [2001] EWCA Civ 782, CA. The Tribunal has held that internal flight is not possible where the state is the agent of persecution: see *Kumaran v Secretary of State for the Home Department* (7 June 2000, unreported), IAT.

8 See *Mbanza v Secretary of State for the Home Department* [1996] 1 All ER 870, [1996] Imm AR 136, CA; *Danian v Secretary of State for the Home Department* [2000] Imm AR 96, CA. The contrary had been suggested in *R v Immigration Appeal Tribunal, ex p B* [1989] Imm AR 166; and *Gilgham v Immigration Appeal Tribunal* [1995] Imm AR 129, CA.

9 See *Iftikhar Ahmed v Secretary of State for the Home Department* [2000] INLR 1, CA. In the earlier cases of *Mendis v Immigration Appeal Tribunal and Secretary of State for the Home Department* [1989] Imm AR 6, CA; and *Ahmad v Secretary of State for the Home Department* [1990] Imm AR 61, CA, the Court of Appeal suggested the contrary.

10 *R v Immigration Appeal Tribunal, ex p Jonah* [1985] Imm AR 7. In *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489, [2000] 3 All ER 577, HL, Lord Lloyd of Berwick described the proposition that persecution should be given its ordinary dictionary definition as 'settled law'. See also *Kagama v Secretary of State for the Home Department* [1997] Imm AR 137, CA; *Faraj v Secretary of State for the Home Department* [1999] INLR 451, CA (persecution a question of fact subject to review on *Wednesbury* principles). As to the principles contained in *Associated Provincial Picture Houses v Wednesbury Corp* [1948] 1 KB 223, [1947] 2 All ER 680, CA, see JUDICIAL REVIEW vol 61 (2010) PARA 602.

11 See the analysis in James C Hathaway *The Law of Refugee Status* (1991) pp 99-134.

12 Ie rights from which no derogation is permitted (eg the right to life; the prohibition against torture, cruel, inhuman or degrading treatment; and freedom from slavery): see generally CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 122 et seq.

13 Ie rights from which states may derogate in times of emergency (eg freedom from arbitrary arrest and detention; freedom of expression, assembly and association): see generally CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 122 et seq.

14 Ie rights which states are required progressively to realise in a non-discriminatory manner (eg the right to work; entitlement to housing, medical attention, basic education): see generally CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 122 et seq.

15 See James C Hathaway *The Law of Refugee Status* (1991) pp 109-112. His analysis, that 'persecution is most appropriately defined as the sustained or systemic failure of state protection in relation to one of the core entitlements which has been recognised by the international community', was applied by the Immigration Appeal Tribunal in *Gashi and Niqshiqi v Secretary of State for the Home Department* [1997] INLR 96; and indorsed by the Court of Appeal in *Sandralingham v Secretary of State for the Home Department* [1996] Imm AR 97, CA; and *Adan v Secretary of State for the Home Department* [1997] 2 All ER 723, [1997] Imm AR 251, CA (revsd on other grounds sub nom *Secretary of State for the Home Department v Adan* [1999] 1 AC 293, [1998] 2 All ER 453, HL). In *Sandralingham v Secretary of State for the Home Department* supra at 114 Staughton LJ said that persecution 'must at least be persistent and serious ill-treatment without just cause by the state, or from which the state can provide protection but chooses not to'. This was in the context of breach of second category rights. Although 'persistence' has been treated in other cases as necessary (see eg *Faraj v Secretary of State for the Home Department* [1999] INLR 451, CA; *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489 at 511, [2000] 3 All ER 577 at 596, HL, obiter per Lord Clyde), the Court of Appeal in *Demirkaya v Secretary of State for the Home Department* [1999] Imm AR 498, accepted that risk of torture would be persecution (not necessarily requiring repetition). See also *Doymus v Secretary of State for the Home Department* (30 August 2000, unreported), IAT. In New Zealand any requirement of systematic conduct is treated as misdirection: see *Refugee Appeal No 71462/99* [2000] INLR 311 (and cases there referred to).

16 *R v Secretary of State for the Home Department, ex p Jeyakumaran* [1994] Imm AR 45, QBD, per Taylor J. However, the Secretary of State is entitled to take account of that circumstance as one matter in his consideration: *R v Secretary of State for the Home Department, ex p Gulbache* [1991] Imm AR 526. One member of a family may be persecuted by what is done to another: *Katrinak v Secretary of State for the Home Department* [2001] EWCA Civ 832, CA.

17 See UNHCR *Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the status of refugees* (UNHCR 1979, re-edited Geneva 1992) paras 56-60; *R v Secretary of State for the Home Department, ex p Singh* [1994] Imm AR 42. In *Sepe v Secretary of State for the Home Department, Bulbul v Secretary of State for the Home Department* [2001] EWCA Civ 681, the Court of Appeal considered whether prosecution of conscientious objectors for failure to perform military service was persecution; it held (by majority) that it was not, since the right to conscientious objection to military service was not a recognised human right. Where a person who is, or is believed to be, a political offender, is exposed to excessive or arbitrary punishment, a strong inference arises that this is persecution for a Convention reason: *R (on the application of Sivakumar) v Secretary of State for the Home Department* [2001] EWCA Civ 1196.

18 *Secretary of State for the Home Department v Adan* [1999] 1 AC 293, [1998] 2 All ER 453, HL.

19 *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489, [2000] 3 All ER 577, HL (Roma from Slovakia who feared persecution by skinheads). In *Gardi v Secretary of State for the Home Department* [2002] EWCA Civ 750, Keene LJ stated (obiter) that protection had to be 'that of an entity which is capable of granting nationality to a person in a form recognised internationally'. A body with UN authority and the consent of the state in which it operated was held to be capable of providing protection in *Canaj v Secretary of State for the Home Department, Vallaj v Special Adjudicator* [2001] EWCA Civ 782, CA.

20 *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489 at 499, [2000] 3 All ER 577 at 586, HL, per Lord Hope of Craighead. What was required was 'a system of domestic protection and machinery for the detection, prosecution and punishment of actings contrary to the purposes which the Convention requires to have protected. More importantly there must be an ability and a readiness to operate that machinery': *Horvath v Secretary of State for the Home Department* supra at 509 and 595-596 per Lord Clyde. Lord Lloyd (dissenting), considered that the ordinary meaning of the word 'persecution' did not involve a failure of state protection. *Horvath v Secretary of State for the Home Department* supra concerned attacks by skinheads. In *Svazas v Secretary of State for the Home Department* [2002] EWCA Civ 74, [2002] WLR 1891, a case involving police brutality, the court held that while in all cases the ultimate question was whether surrogate international protection was required by reason of insufficiency of protection in the home state, where the source of harm is agents of the state a different, and higher, standard of protection is required. While not requiring a guarantee against police misconduct, it does call for timely and effective rectification of the situation allowing misconduct. For criticism of the majority decision in *Horvath v Secretary of State for the Home Department* supra see the decision of New Zealand's Refugee Status Appeals Authority in *Refugee Appeal No 71427/99* [2000] INLR 608. Since the decision in *Horvath v Secretary of State for the Home Department* supra it has been emphasised that whether or not there is generally a 'sufficiency of protection', the crucial question in any individual case is always whether there is a reasonable degree of likelihood of Convention persecution: see *Noune v Secretary of State for the Home Department* [2000] All ER (D) 2163; *Koudriachov v Secretary of State for the Home Department* (22 September 2000, unreported), IAT; *Harangova v Secretary of State for the Home Department* (8 November 2000, unreported), IAT; *Doudetski v Secretary of State for the Home Department* (29 June 2000, unreported), IAT. See also *R (on the application of Harakal) v Secretary of State for the Home Department* [2001] All ER (D) 139, CA (unnecessary to exhaust all possible domestic remedies to demonstrate failure of state protection). If rape, and other atrocities, are part of a deliberate policy or result from the inability of the authority to take reasonable steps to control such behaviour,

they can be a form of persecution under the Refugee Convention: *R v Immigration Appeal Tribunal, ex p Subramaniam* [1999] Imm AR 359.

21 *R v Secretary of State for the Home Department, ex p Adan* [2001] 2 AC 477, [2001] 1 All ER 593, HL.

22 *Secretary of State for the Home Department v Adan* [1999] 1 AC 293, [1998] 2 All ER 453, HL. See also *Kibiti v Secretary of State for the Home Department* [2000] Imm AR 594, CA (applying the principle in *Secretary of State for the Home Department v Adan* supra to the Congo: the claimant could only claim the protection of the Refugee Convention if his fear of persecution was over and above that attaching to his involvement in the civil war and if that fear was for a Convention reason). The High Court of Australia has rejected this analysis: *Minister for Immigration and Multicultural Affairs v Abdi* (1999) 162 ALR 105; *Minister for Immigration and Multicultural Affairs v Ibrahim* [2001] INLR 228.

23 *R v Immigration Appeal Tribunal, ex p Shah (UNHCR intervening), Islam v Secretary of State for the Home Department (UNHCR intervening)* [1999] 2 AC 629, [1999] 2 All ER 545, HL.

24 *R v Immigration Appeal Tribunal, ex p Shah (UNHCR intervening), Islam v Secretary of State for the Home Department (UNHCR intervening)* [1999] 2 AC 629, [1999] 2 All ER 545, HL.

25 Although in *Omoruyi v Secretary of State for the Home Department* [2000] All ER (D) 1367, [2001] Imm AR 175 AT 183, CA (fear of persecution for reasons of religion) Simon Brown LJ suggested an element of conscious discrimination was required, he referred also to discrimination 'at least in the sense that the substantive law or its enforcement in practice bears unequally upon different people or different groups' which would not necessarily connote conscious discrimination. The Court of Appeal has held that conscious discrimination is not required: see *Sepet and Bulbul v Secretary of State for the Home Department* [2001] EWCA Civ 681. See further *Chen Shi Hai v Minister for Immigration and Multicultural Affairs* [2000] INLR 455, Aust HC (proof of persecutor's motives unnecessary). See also *R (on the application of Sivakumar) v Immigration Appeal Tribunal* [2001] EWCA 1196 (strong inference of persecution for reasons of imputed political opinion in case of Sri Lankan Tamil suspected of separatist sympathies where objective evidence shows that most torture victims are Tamils suspected of being separatist insurgents or collaborators). See also *Montoya v Secretary of State for the Home Department* [2002] EWCA Civ 620 (wealthy Colombian lawyer was threatened for money by Maoist group; held not persecuted for Convention reason).

26 Namely race, religion, nationality, membership of a particular social group and political opinion: see the Refugee Convention art 1A(2); and the text and notes 1-3 supra.

27 *R v Immigration Appeal Tribunal, ex p Shah (UNHCR intervening), Islam v Secretary of State for the Home Department (UNHCR intervening)* [1999] 2 AC 629, [1999] 2 All ER 545, HL.

28 *R v Immigration Appeal Tribunal, ex p Shah (UNHCR intervening), Islam v Secretary of State for the Home Department (UNHCR intervening)* [1999] 2 AC 629, [1999] 2 All ER 545, HL (women in Pakistan are a social group since society discriminates against them on the grounds of sex). See also, inter alia, *Fatemeh v Secretary of State for the Home Department* (3 April 2000, unreported), IAT (Iranian woman fearing prosecution for adultery after leaving violent husband); *Secretary of State for the Home Department v Dzhygun* (17 May 2000, unreported), IAT (Ukrainian woman forced into prostitution where evidence showed Ukraine to be 'an important source country of girls and women trafficked for sexual exploitation').

29 *R v Immigration Appeal Tribunal, ex p Shah (UNHCR intervening), Islam v Secretary of State for the Home Department (UNHCR intervening)* [1999] 2 AC 629, [1999] 2 All ER 545, HL. See also *Jain v Secretary of State for the Home Department* [2000] INLR 71, CA (homosexuals in India constitute a particular social group where discriminated against because of law making sodomy an offence); *Beteringhe v Secretary of State for the Home Department* (11 October 1999, unreported), IAT (homosexuals in Romania); *Apostolov v Secretary of State for the Home Department* (24 September 1999, unreported), IAT (homosexuals in Bulgaria). However, it should be noted that the establishment of the existence of a social group of which the claimant is a member does not make the claimant a refugee: a well-founded fear of persecution for reasons of membership of the group must always be established. See also *R v Secretary of State for the Home Department, ex p Binbasi* [1989] Imm AR 595 (the mere existence of anti-homosexual laws does not necessarily constitute persecution).

30 *Quijano v Secretary of State for the Home Department* [1997] Imm AR 227, CA (a family may constitute a particular social group but the claimant must show that persecution is as a direct result of his membership of that family and not that the family relationship is merely incidental). See also *Jaramillo-Aponte v Secretary of State for the Home Department* (28 April 2000, unreported), IAT (Convention persecution found because claimants at risk 'as members of the Escobar family'). But see *Skenderaj v Secretary of State for the Home Department* [2002] EWCA Civ 567, (a family involved in a blood feud in Albania; held claimant is not a member of a particular social group because the family was not regarded as a distinct group by Albanian society).

31 The right to work appears in the Universal Declaration of Human Rights (Paris, 10 December 1948; UN 2 (1949); Cmd 7662) art 23(1): 'Everyone has the right to work, to free choice of employment, to just and

favourable conditions of work and to protection against unemployment'. See *Ouanes v Secretary of State for the Home Department* [1998] 1 WLR 218, CA (woman sought asylum because death threats prevented her from continuing to work as a midwife in her own country). Employees could constitute a particular social group if the characteristic that defined them was one that they should not be required to change because it was fundamental to their identities or conscience: *Ouanes v Secretary of State for the Home Department* supra. See also *Re Acosta* (1985) 19 I & N 211, US Board of Immigration Appeals (where immutable characteristics that could define a social group were either beyond the power of the individual to change or so fundamental to individual identity or conscience that they ought not to be required to be changed); approved in *R v Immigration Appeal Tribunal, ex p Shah* (UNHCR intervening), *Islam v Secretary of State for the Home Department* (UNHCR intervening) [1999] 2 AC 629 at 640-643, [1999] 2 All ER 545 at 553-556, HL, per Lord Steyn. See further *R (on the application of Fadli) v Secretary of State for the Home Department* [2000] All ER (D) 1946, CA (soldiers do not constitute a particular social group). Opportunistic draft evaders do not constitute a social group (*Adan v Secretary of State for the Home Department* [1997] 1 WLR 1107, [1997] Imm AR 251, CA), although conscientious objectors may be (see *R v Secretary of State for the Home Department, ex p Hashem* [1987] Imm AR 577). See also *Secretary of State for the Home Department v Otchere* [1988] Imm AR 21, IAT (member of military intelligence in Ghana under former regime held to be member of a social group).

32 See generally the decision in *Gomez v Secretary of State for the Home Department* [2000] INLR 549, IAT (starred).

33 See the definition in James C Hathaway *The Law of Refugee Status* (1991) p 154; approved in *Gomez v Secretary of State for the Home Department* [2000] INLR 549 at 562, IAT (starred).

34 *Gomez v Secretary of State for the Home Department* [2000] INLR 549 at 563, IAT (starred).

35 *Lazarevic v Secretary of State for the Home Department* [1997] 1 WLR 1107, [1997] Imm AR 251, CA; *Secretary of State for the Home Department v Otchere* [1988] Imm AR 21, IAT; *Asante v Secretary of State for the Home Department* [1991] Imm AR 78, IAT; *A-G for Canada v Ward* [1993] 2 SCR 689, Can SC.

36 See generally *Sepet v Secretary of State for the Home Department, Bulbul v Secretary of State for the Home Department* [2001] EWCA Civ 681. Conscientious objection can found a valid claim for refugee status where the military service involves acts contrary to basic rules of human conduct (as to which see *Lazarevic v Secretary of State for the Home Department* [1997] 1 WLR 1107, [1997] Imm AR 251, CA), where the conditions of military service are themselves so harsh as to amount to persecution or where punishment is disproportionately severe. But short of these circumstances, prosecution of conscientious objectors will not amount to persecution because international law does not yet recognise the right to conscientious objection sufficiently so as to displace the state's right to require its nationals to perform military service. Cf *Zaitz v Secretary of State for the Home Department* [2000] INLR 346, CA, where the possibility of establishing a refugee claim on the basis of conscientious objection was assumed. See also note 17 supra.

37 Refugee Convention art 1C.

38 See para 238 note 11 ante. As to the relevance of changes in circumstances between the date of claim for refugee status and the determination of the claim see *Mohammed Arif v Secretary of State for the Home Department* [1999] INLR 327, CA (when it is accepted that a person would have qualified for refugee status had his claim been dealt with promptly, the burden lies on the Secretary of State to establish a sufficiently fundamental change to justify refusal). See also *Nabil Salim v Secretary of State for the Home Department* [2000] Imm AR 503, CA; *Dyli v Secretary of State for the Home Department* [2000] Imm AR 652, IAT.

39 Refugee Convention art 1D. This article of the Convention is applied to Palestinians registered with the UN Relief and Works Agency: see the *UNHCR Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the status of refugees* (UNHCR 1979, re-edited Geneva 1992) paras 142-143; and see *El-Ali v Secretary of State for the Home Department, Daraz v Secretary of State for the Home Department* (UNHCR intervening) [2002] EWCA Civ 1103. See also *Dyli v Secretary of State for the Home Department* [2000] Imm AR 652, IAT (the Refugee Convention art 1D could not apply to Kosovans receiving assistance from the United Nations Interim Administration Mission in Kosovo (UNMIK) because they were not outside the Federal Republic of Yugoslavia, the country of their nationality); *R (on the application of Vallaj) v Secretary of State for the Home Department* [2000] All ER (D) 2449 (affd sub nom *Canaj v Secretary of State for the Home Department, Vallaj v Special Adjudicator* [2001] EWCA Civ 782).

40 Refugee Convention art 1F(a). Such crimes are defined in the main international instruments listed in the *UNHCR Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the status of refugees* (UNHCR 1979, re-edited Geneva 1992) Annex VI. See *Amberber v Secretary of State for the Home Department* (16 June 2000, unreported), IAT (Ethiopian accused of 'wars of aggression' whose attacks were not across international boundaries did not commit 'war crimes').

41 Refugee Convention art 1F(b). See *T v Immigration Officer* [1996] AC 742, [1996] 2 All ER 865, [1996] 2 WLR 766, HL (political crime required to be committed for a political purpose (ie with the object of overthrowing

or subverting or changing the government of a state or inducing it to change its policy) and there must be a sufficiently close and direct link between the crime and the alleged political purpose; in assessing whether there is the requisite link, the means used will be considered, and, in particular, whether such means were indiscriminate). See further *Immigration and Naturalization Service v Juan Anibal Aguirre-Aguirre* [2000] INLR 60, US Supreme Court (applying *T v Immigration Officer* supra in respect of Guatemalan who had admitted participation in burning of buses).

42 Refugee Convention art 1F(c). See *Pushpanathan v Canada (Minister of Citizenship and Immigration (Canadian Council for Refugees Intervening))* [1999] INLR 36, Can SC (the Refugee Convention art 1F(c) excludes those responsible for serious, sustained or systemic violations of fundamental human rights amounting to persecution in non-war setting: this did not apply to convicted drugs trafficker). See also *Mukhtiar Singh and Paramjit Singh v Secretary of State for the Home Department* (31 July 2000, unreported), SIAC (Sikh separatists involved in organisation of terrorism were within the Refugee Convention art 1F(c)).

43 The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 3 (prohibition of torture or inhuman or degrading treatment or punishment) prevents removal of anyone where there are substantial grounds for believing there to be a real risk that removal would result in such treatment. See *Soering v United Kingdom* (1989) 11 EHRR 439, ECtHR. This is irrespective as to whether such person is a terrorist and/or a risk to national security: *Chahal v United Kingdom* (1996) 23 EHRR 413, ECtHR. See also *Ahmed v Austria* (1996) 24 EHRR 278, ECtHR.

44 Refugee Convention art 33(1). The reference to threats to 'life or freedom' does not connote a different test from art 1A(2) (see the text and notes 1-3 supra), and the provision applies to all with a well-founded fear of persecution (ie irrespective as to whether persecution falls short of threats to life or freedom): *Adan v Secretary of State for the Home Department* [1997] 1 WLR 1107, [1997] Imm AR 251, CA. Further, the reference to 'would be threatened' does not connote a higher threshold than that under the Refugee Convention art 1A(2): *R v Secretary of State for the Home Department, ex p Sivakumaran* [1988] AC 958, [1988] 1 All ER 193, [1988] Imm AR 147, HL.

45 *Re Musisi* [1987] AC 514 at 526, HL, per Lord Bridge of Harwich.

46 Refugee Convention art 33(2). In addition, contracting states must not expel a refugee lawfully in their territory save on grounds of national security or public order: art 32(1).

47 See the Special Immigration Appeals Commission Act 1997 s 2 (as amended), s 2A (as added and amended; and para 184 ante. The Commission was established following the decision of the European Court of Human Rights in *Chahal v United Kingdom* [1996] 23 EHRR 413, ECtHR, holding that the previous 'advisory panel' breached the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 5(4). See further para 243 post.

48 See *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, [2002] 1 All ER 122, upholding the decision of the Court of Appeal ([2000] INLR 531) (which had reversed the decision of the Commission) in concluding that the possibility of risk or danger to the security or well-being of the nation need not be the result of a 'direct threat', nor are the interests of national security limited to action by an individual which can be said to be 'targeted at' the United Kingdom, its system of government or its people.

49 See note 43 supra.

UPDATE

238-244 Claims for Asylum

Education about the nature of the asylum process may now be provided to asylum-seekers through programmes of induction arranged by the Secretary of State: see further PARA 238A.

239 Meaning of 'refugee'

TEXT AND NOTES--As to provision for determining whether a person is a refugee or a person eligible for humanitarian protection see the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, SI 2006/2525.

NOTE 3--See also *QD (Iraq) v Secretary of State for the Home Department (United Nations High Commission for Refugees intervening)*; *AH (Iraq) v Secretary of State for*

the Home Department (United Nations High Commission for Refugees intervening) [2009] EWCA Civ 620, [2009] All ER (D) 256 (Jun).

NOTE 5--An asylum-seeker who argues that he is at a serious risk of harm from non-state agents in his home state must also show, in order to support a claim based on the prohibition of inhuman or degrading treatment, that the state offers inadequate protection against that harm: *R (on the application of Bagdanavicius) v Secretary of State for the Home Department* [2005] UKHL 38, [2005] 4 All ER 263. See also *Gurung v Secretary of State for the Home Department* [2004] All ER (D) 296 (Dec), CA (adjudicator wrong to find that former police inspector no longer likely to be persecuted); *El-Rifai v Secretary of State for the Home Department* [2005] All ER (D) 263 (Feb), CA (adjudicator wrong not to consider the risk of torture).

NOTE 7--In relation to the reasonableness of relocating, the appropriate comparison is between the situation at home and the situation in the place of relocation; for this purpose the protection to human rights given in the United Kingdom or under international human rights conventions is irrelevant: *Januzi v Secretary of State for the Home Department*; *Hamid v Secretary of State for the Home Department*; *Gaafar v Secretary of State for the Home Department*; *Mohammed v Secretary of State for the Home Department* [2006] UKHL 5, [2006] 2 AC 426; *JB (Sudan) v Secretary of State for the Home Department* [2008] All ER (D) 05 (Nov), CA. See also *Hysi v Secretary of State for the Home Department* [2005] EWCA Civ 711, [2005] All ER (D) 135 (Jun) (claimant only able to avoid persecution by concealing or denying his ethnicity; adjudicator failed to address question of whether requiring his return would be unduly harsh); *R (on the application of Kpangni) v Secretary of State for the Home Department* (2005) Times, 3 May (test for whether claimant was at a real risk of ill-treatment; claimant could not be required to demonstrate that there had been a consistent pattern of gross and systematic violation of fundamental human rights); *EB (Ethiopia) v Secretary of State for the Home Department* [2007] EWCA Civ 809; [2008] 3 WLR 1188, [2007] All ER (D) 489 (Jul) (removal of identity documents constituted persecution).

NOTE 17--*Sepet*, cited, affirmed at [2003] UKHL 15, [2003] 3 All ER 304; and applied in *BE (Iran) v Secretary of State for the Home Department* [2008] EWCA Civ 540, [2008] All ER (D) 263 (May). *Sivakumar*, cited, affirmed: [2003] UKHL 14, [2003] 2 All ER 1097.

A tribunal deciding whether to grant asylum to a person who fears persecution if returned to his country because he has evaded military service must consider whether such service involved acts, with which the person could be associated, that were contrary to basic rules of human conduct as defined by international law: *Krotov v Secretary of State for the Home Department* [2004] EWCA Civ 69, [2004] All ER (D) 179 (Feb); followed in *Davidov v Secretary of State for the Home Department* 2005 SLT 953, IH.

Bearing in mind the authorities' previous ill-treatment of the claimant, the fact that he had absconded in breach of a condition to report to the authorities every day was a relevant consideration: *Yapici v Secretary of State for the Home Department* [2005] EWCA Civ 826, [2005] All ER (D) 78 (Jul).

NOTES 19, 20--A failure to provide sufficient protection requires a systemic failure affecting a category of persons rather than isolated individuals; a willingness to provide protection does not by itself make that protection sufficient: *R (on the application of Atkinson) v Secretary of State for the Home Department* [2004] EWCA Civ 846, [2004] ACD 280.

NOTE 27--*Shah*, cited, applied in *Liu v Secretary of State for the Home Department* [2005] EWCA Civ 249, [2005] 1 WLR 2858 (woman who fled China after forced abortion). Victims of female genital mutilation in Sierra Leone belong to a particular

social group for the purposes of the Convention: *K v Secretary of State for the Home Department*; *Fornah v Secretary of State for the Home Department* [2006] UKHL 46, [2007] 1 All ER 671. Being discriminated against does not in itself constitute persecution: *AI (Nigeria) v Secretary of State for the Home Department* [2007] All ER (D) 243 (Jun), CA (fact that single women in Nigeria were regarded as sexually available did not mean they were at risk of persecution). See also *Johnson v Secretary of State for the Home Department* 2005 SLT 393, OH.

NOTE 29--See *HJ (Iran) v Secretary of State for the Home Department*; *HT (Cameroon) v Secretary of State for the Home Department* [2009] EWCA Civ 172, [2009] 2 All ER 1213 (Mar) (homosexual should be willing to exercise a certain level of discretion concerning his sexuality).

NOTE 30--*Skenderaj*, cited, reported at [2002] 4 All ER 555.

NOTE 32--See also Application 21878/06 *Nyanzi v United Kingdom* (2008) 47 EHRR 461, ECtHR (daughter of political prisoner in Uganda did not have well-founded fear of persecution).

NOTE 35--See *Suarez v Secretary of State for Home Department* [2002] EWCA Civ 722, [2002] 1 WLR 2663.

TEXT AND NOTES 40-46--The Immigration, Asylum and Nationality Act 2006 s 55 applies to an asylum appeal where the Secretary of State issues a certificate that the appellant is not entitled to the protection of the Refugee Convention art 33(1) because (1) art 1F applies to him (whether or not he would otherwise be entitled to protection), or (2) art 33(2) applies to him on grounds of national security (whether or not he would otherwise be entitled to protection): 2006 Act s 55(1). In s 55 (a) 'asylum appeal' means an appeal (i) which is brought under the Nationality, Immigration and Asylum Act 2002 s 82, 83 or 101 or the Special Immigration Appeals Commission Act 1997 s 2, and (ii) in which the appellant claims that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom's obligations under the Refugee Convention, and (b) 'the Refugee Convention' means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951: 2006 Act s 55(2). The Asylum and Immigration Tribunal or the Special Immigration Appeals Commission must begin substantive deliberations on the asylum appeal by considering the statements in the Secretary of State's certificate: s 55(3). If the Tribunal or Commission agrees with those statements it must dismiss such part of the asylum appeal as amounts to an asylum claim (before considering any other aspect of the case): s 55(4).

NOTES 40, 42--See *MH (Syria) v Secretary of State for the Home Department*; *DS (Afghanistan) v Secretary of State for the Home Department* [2009] EWCA Civ 226, [2009] 3 All ER 564.

NOTE 40--As to guidance on the interpretation of the Refugee Convention art 1F(a) see *R (on the application of JS (Sri Lanka)) v Secretary of State for the Home Department* [2010] UKSC 15, [2010] 2 WLR 766, [2010] All ER (D) 151 (Mar).

TEXT AND NOTE 42--In the construction and application of the Refugee Convention art 1F(c) the reference to acts contrary to the purposes and principles of the United Nations will be taken as including, in particular (1) acts of committing, preparing or instigating terrorism (whether or not the acts amount to an actual or inchoate offence), and (2) acts of encouraging or inducing others to commit, prepare or instigate terrorism (whether or not the acts amount to an actual or inchoate offence): Immigration, Asylum and Nationality Act 2006 s 54(1). In s 54 'the Refugee Convention' means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, and 'terrorism' has the meaning given by the Terrorism Act 2000 s 1: 2006 Act s 54(2).

NOTE 42--See *Al-Sirri v Secretary of State for the Home Department* [2009] EWCA Civ 222, [2009] All ER (D) 220 (Mar) (no evidential weight attached to indictment given in support for extradition request when no supporting evidence tendered at hearing).

NOTE 44--The Refugee Convention does not apply to refugees who have not yet left the country from which they wish to flee: *R (on the application of European Roma Rights Centre) v Immigration Officer at Prague Airport (United Nations High Comm for Refugees intervening)* [2004] UKHL 55, [2005] 2 AC 1. See also *District Court in Ostroleka, Poland v Dytlow* [2009] All ER (D) 202 (Apr), DC (refusal of extradition pursuant to European arrest warrant).

TEXT AND NOTE 46--For the purposes of the Refugee Convention art 33(2), a person is presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if (1) he is convicted in the United Kingdom of an offence, and sentenced to a period of imprisonment of at least two years; (2) he is convicted outside the United Kingdom of an offence, sentenced to a period of imprisonment of at least two years, and could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence; or (3) he is convicted of an offence specified by order of the Secretary of State, or is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by such an order: Nationality, Immigration and Asylum Act 2002 s 72(1)-(4). An order under head (3) is subject to annulment in pursuance of a resolution of either House of Parliament: s 72(5). For an order made under head (3) see the Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004, SI 2004/1910. A presumption under the 2002 Act s 72 that a person constitutes a danger to the community is rebuttable by that person, and does not apply while an appeal against conviction or sentence is pending or could be brought (disregarding the possibility of appeal out of time with leave): s 72(6), (7). The Anti-terrorism, Crime and Security Act 2001 s 34(1) (see PARA 180) applies for the purpose of considering whether a presumption that a person constitutes a danger to the community has been rebutted as it applies for the purpose of considering whether the Refugee Convention art 33(2) applies: 2002 Act s 72(8). For these purposes, a reference to a person who is sentenced to a period of imprisonment of at least two years (a) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it is to take effect); (b) does not include a reference to a person who is sentenced to a period of imprisonment of at least two years only by virtue of being sentenced to consecutive sentences which amount in aggregate to more than two years; (c) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders); and (d) includes a reference to a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for two years): s 72(11) (amended by UK Borders Act 2007 s 39). See also Immigration, Asylum and Nationality Act 2006 s 55(5). Where an immigration judge has held that the presumption under the 2002 Act s 72 has been rebutted, the Secretary of State may not circumvent that ruling by an administrative decision: *TB (Jamaica) v Secretary of State for the Home Department* [2008] EWCA Civ 977, [2008] All ER (D) 90 (Aug) (refusal of leave to enter and remain unlawful).

NOTES--In order to fall within the protection of the Refugee Convention, a person must first have his status as a refugee formally determined: *R (on the application of Hoxha) v Special Adjudicator*; *R (on the application of B) v Immigration Appeal Tribunal* [2005] UKHL 19, [2005] 4 All ER 580. A person who can return to his country voluntarily without being put at risk of persecution there is not a refugee, notwithstanding that he

will be at risk if he is deported: *AA v Secretary of State for the Home Department*; *LK v Secretary of State for the Home Department* [2006] EWCA Civ 401, [2007] 2 All ER 160.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(1) CLAIMS FOR ASYLUM/240. Consideration of asylum claims.

240. Consideration of asylum claims.

The criteria for assessing asylum claims are principally those contained in the Refugee Convention¹. However, a failure, without reasonable explanation, to make a prompt and full disclosure of material facts, either orally or in writing, or otherwise to assist the Secretary of State in establishing the facts of the case may lead to the refusal of an asylum claim². In determining an asylum claim the Secretary of State will have regard to matters which may damage an asylum claimant's credibility if no reasonable explanation is given and the claim will be refused if the Secretary of State concludes that for these or other reasons the claimant's account is not credible³. In considering these matters, the actions of anyone acting as an asylum claimant's agent may also be taken into account⁴. If there is a part of the country from which the claimant claims to be a refugee in which he would not have a well-founded fear of persecution, and to which it would be reasonable to expect him to go, the claim may be refused⁵. Cases will normally be considered on an individual basis, but if a claimant is part of a group whose claims are clearly not related to the criteria for refugee status in the Refugee Convention he may be refused without examination of his individual claim⁶. However, the Secretary of State must have regard to any evidence produced by an individual to show that his claim should be distinguished from those of the rest of the group⁷.

Where a person who is an illegal entrant, liable to be removed as a result of being unlawfully in the country⁸, or who has arrived in the United Kingdom without leave to enter, an entry clearance, or a current work permit in which he is named, makes a claim for asylum under the Refugee Convention or a claim that it would be contrary to the United Kingdom's obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)⁹ for him to be removed from, or required to leave, the United Kingdom, he will be required to state any additional grounds which he has or may have for wishing to enter or remain in the United Kingdom¹⁰. At this stage, if he has made his claim under one of the Conventions mentioned above and wishes also to make a claim under the other, he should do so in writing and serve it on the person responsible for the determination of the claim within the prescribed period¹¹. Similarly, a person who has been refused leave to enter, or who has been refused a variation of leave to remain as a consequence of which he may be required to leave the United Kingdom within 28 days, or against whom the Secretary of State has decided to make a deportation order and who has a right of appeal against the relevant immigration decision while remaining in the United Kingdom, will be required, at the same time as, or in the alternative to, lodging his appeal, to state any additional grounds he has or may have for wishing to remain in the United Kingdom¹². At this stage such a person who has not already made a claim for protection under either or both the Refugee Convention and the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and who wishes to do so, should make his claim under either or both Conventions in writing and serve it on the Secretary of State before the end of the prescribed period¹³. In this way all the grounds upon which a person wishes to enter or remain in the United Kingdom can be taken into account in one decision and if necessary can be considered on one appeal against that decision¹⁴.

Where an asylum claimant has previously been refused asylum during his stay in the United Kingdom, the Secretary of State will determine whether any further representations should be treated as a fresh claim for asylum¹⁵. The Secretary of State will so treat them if the claim

advanced in the representations is sufficiently different from the earlier claim that there is a realistic prospect that the conditions set out for a grant of asylum¹⁶ will be satisfied¹⁷. In considering whether to treat the representations as a fresh claim, the Secretary of State will disregard any material which is not significant, or is not credible, or was available to the claimant at the time when the previous claim was refused or when any appeal was determined¹⁸. A refusal by the Secretary of State to treat further representations as a fresh claim for asylum does not require him to make a new immigration decision against which an appeal will lie on asylum grounds¹⁹.

Where a person whose appeal against an immigration decision has been finally determined then applies for leave to enter or remain on the ground that his being removed from, or required to leave, the United Kingdom, would be in breach of his rights under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the immigration officer or, as the case may be, the Secretary of State, may refuse that application and may certify that in his opinion one purpose of making the application was to delay the removal of the applicant or any other member of his family and that he had no other legitimate purpose for making the application²⁰. In such a case the person may not bring any appeal against the decision on the application²¹. Where a person whose appeal against an immigration decision has been finally determined serves a notice of appeal against a further immigration decision on the ground that the decision is in breach of his rights under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the Secretary of State may certify that the ground was considered in the previous appeal²². Alternatively and as appropriate, the Secretary of State may certify that in his opinion the appellant's claim under the Convention could reasonably have been included in his statement of additional grounds prior to his original appeal but was not so included or could reasonably have been made in the original appeal but was not so made and that one purpose of the claim would be to delay the removal from the United Kingdom of the appellant or any member of his family and that the appellant had no other legitimate purpose for the making the claim²³. In either case, on the issuing of such certificates by the Secretary of State, the appellant's appeal, as far as relating to his human rights grounds or claim, is to be treated as finally determined²⁴.

A spouse or minor child²⁵ accompanying a principal claimant may be included in a claim for asylum, or may claim asylum in his own right²⁶. If the principal claimant is granted asylum and leave to enter or remain any spouse or minor child will be granted leave to enter or remain for the same duration²⁷. The case of any dependant who claims asylum in his own right and who would otherwise be refused leave to enter or remain must be considered individually in accordance with the conditions for the grant of asylum²⁸. If the spouse or minor child in question has a claim in his own right, it should be made at the earliest opportunity²⁹. Any failure to do so will be taken into account and may damage the claimant's credibility if no reasonable explanation for it is given³⁰. Where an asylum claim is unsuccessful the claimant may, at the same time as asylum is refused, be notified of removal directions or served with a notice of the Secretary of State's intention to deport him, as appropriate³¹.

Unaccompanied children may also claim asylum and, in view of their potential vulnerability, particular priority and care is to be given to the handling of their cases³². A person of any age may qualify for refugee status under the Refugee Convention and the criteria for a grant of asylum³³ apply to all cases³⁴. However, account should be taken of the claimant's maturity and in assessing the claim of a child more weight should be given to objective indications of risk than to the child's state of mind and understanding of his or her situation³⁵. An asylum claim made on behalf of a child should not be refused solely because the child is too young to understand his situation or to have formed a well-founded fear of persecution³⁶. Close attention should be given to the welfare of the child at all times³⁷. An accompanied or unaccompanied child who has claimed asylum in his own right may be interviewed about the substance of his claim or to determine his age and identity³⁸.

The spouses and minor children of persons who have been granted asylum in the United Kingdom can apply for leave to enter or remain in the United Kingdom as the spouse or child of a refugee³⁹. The requirements for being granted leave to enter or remain as the spouse of a refugee are that the applicant is married to a person granted asylum in the United Kingdom, the marriage did not take place after the person granted asylum left the country of his former habitual residence in order to seek asylum, the applicant would not be excluded from refugee recognition and protection⁴⁰ if he or she were to seek asylum in his or her own right, and the parties intend to live permanently together as spouses in a subsisting marriage⁴¹. The requirements for being granted leave to enter or remain in order to join or remain with a parent who has been granted asylum in the United Kingdom are that the applicant is the child of such a parent, is under the age of 18 and is not leading an independent life, is unmarried and has not formed an independent family unit, was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of his former habitual residence in order to seek asylum, and would not be excluded from refugee recognition and protection⁴² if he were to seek asylum in his own right⁴³.

1 le the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) and Protocol (New York, 31 January 1967; TS 15 (1969); Cmnd 3906). See paras 238-239 ante.

2 Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) ('the Immigration Rules') para 340 (substituted by Statement of Changes in Immigration Rules (Cmnd 3365) (1996) para 13). As to the Secretary of State see para 2 ante. Where evidence of false statements by an asylum-seeker emerges in the course of separate proceedings, the court, in the interest of the administration of justice, should order disclosure of the asylum-seeker's true situation: *Re B (Abduction: False Immigration Information)* [2000] 2 FLR 835. Failure to assist the Secretary of State specifically includes failure to comply with a notice issued by the Secretary of State or an immigration officer requiring the claimant to report to a designated place to be fingerprinted (see para 242 post), or failure to complete an asylum questionnaire, or failure to comply with a request to attend an interview concerning the claim, or failure to comply with a requirement to report to an immigration officer for examination: Immigration Rules para 340 (as so substituted). However the provision should be read as procedurally authorising the Secretary of State to act on the claim even though there is a lack of co-operation by the claimant. It cannot remove the obligation to consider the claim but allows the Secretary of State substantively to refuse the claim on the basis that the claimant, upon whom the burden lies, has failed to establish that he is a refugee. Such 'non-compliance' refusals must accordingly be based on both a substantive refusal under the Immigration Rules para 336 (as failing to meet the criteria for the grant of refugee status in the Immigration Rules para 334) (see para 238 ante) as well as procedurally under the Immigration Rules para 340 (as substituted) for 'non-compliance': *Haddad v Secretary of State for the Home Department* [2000] INLR 117, IAT (a refusal of asylum that is purely for non-compliance reasons would be ultra vires the Refugee Convention and therefore of the Asylum and Immigration Appeals Act 1993 s 2). Where an appeal is lodged against a consequential immigration decision based on the refusal, the adjudicator must address the fundamental question of whether the appellant is a refugee and the issue of non-compliance is relevant, if at all, only to credibility: *Haddad v Secretary of State for the Home Department* supra. In cases where there has been an erroneous refusal on non-compliance grounds, due to a mistakenly held belief by the Secretary of State that the claimant's statement of evidence form had not been returned in time, it has been agreed that where the claimant within three months of receiving the notice of refusal requests the Secretary of State to withdraw the refusal on the ground that the statement of evidence form was in fact received in time and it is accepted that this is so, the Secretary of State will withdraw the refusal and will consider the asylum claim in the normal way: *R (on the application of Karaoglan, Hadavi and Bashri) v Secretary of State for the Home Department* (4 May 2001) per Sullivan J by consent.

3 Immigration Rules para 341 (substituted by Statement of Changes in Immigration Rules (Cmnd 3365) (1996) para 14). The immigration rule provides a non-exhaustive list of such matters as follows: (1) that the claimant has failed without reasonable explanation to claim asylum forthwith upon arrival in the United Kingdom, unless the claim is founded on events which have taken place since his arrival in the United Kingdom; (2) that the claim is made after refusal of entry, a court recommendation for deportation or notification of a deportation decision or liability for removal; (3) that the claimant has adduced manifestly false evidence in support of his claim or has otherwise made false representations, either orally or in writing; (4) that on arrival and on being required to produce a passport, the claimant either failed to do so without reasonable explanation or produced an invalid passport without informing the immigration officer of the invalidity; (5) that the claimant has otherwise without reasonable explanation destroyed, damaged or disposed of any passport, other document or ticket relevant to his claim; (6) that the claimant has undertaken any activities in the United Kingdom, before or after lodging his claim, which are inconsistent with his previous beliefs and behaviour and calculated (meaning 'likely' and not 'deliberately calculated': *Gilgham v Immigration Appeal Tribunal* [1995] Imm AR 129, CA) to create or substantially enhance his claim to refugee status; (7) that the claimant has

lodged concurrent claims for asylum in the United Kingdom or in another country: Immigration Rules para 341 (as so substituted).

4 Immigration Rules para 342.

5 Immigration Rules para 343. Whether it is reasonable to expect the claimant to go to another part of his country where he does not have a well-founded fear of persecution is to be decided by considering whether it is unduly harsh, in all the circumstances, to expect the claimant to go to that part of the country: see *R v Secretary of State for the Home Department, ex p Robinson* [1998] QB 929, [1997] 4 All ER 210, sub nom *Robinson (Anthonypillai) v Secretary of State for the Home Department* [1997] Imm AR 568, CA; *Gnanam v Secretary of State for the Home Department* [1999] Imm AR 436, CA; *Karanakaran v Secretary of State for the Home Department* [2000] 3 All ER 449, [2000] Imm AR 271, CA (the question is not susceptible to any standard of proof). See also para 239 note 7 ante.

6 Immigration Rules para 344.

7 Immigration Rules para 344.

8 He is liable to be removed under the Immigration and Asylum Act 1999 s 10: see para 154 ante.

9 He is the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969).

10 See the Immigration and Asylum Act 1999 s 75(1), (2). See also para 185 ante.

11 See *ibid* s 75(3). The prescribed period for serving the statement is ten working days if the person is entitled to appeal under the Immigration and Asylum Act 1999 and five working days if he is entitled to appeal under the Special Immigration Appeals Commission Act 1997 (see para 185 ante): Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000, SI 2000/2244, reg 4.

12 See the Immigration and Asylum Act 1999 s 74(1)-(5); and para 185 ante. The decision-maker (meaning the Secretary of State or as the case may be an immigration officer: s 74(5)) must serve on the claimant and on any relevant member of his family (as defined in the Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000 (SI 2000/2244), reg 6) a notice requiring the recipient to state any additional grounds which he has or may have for wishing to enter or remain in the United Kingdom: Immigration and Asylum Act 1999 s 74(4).

13 See *ibid* s 74(6), (7) (as amended); and para 185 ante. The prescribed period for serving the statement is the same as for serving a statement under s 75: see note 11 *supra*.

14 See *ibid* s 77; and para 185 ante.

15 Immigration Rules para 346 (substituted by Statement of Changes in Immigration Rules (Cmd 3365) (1996) para 16).

16 He is the criteria set out in the Immigration Rules para 334: see para 238 text and notes 8-9 ante.

17 Immigration Rules para 346 (as substituted: see note 15 *supra*).

18 Immigration Rules para 346 (as substituted: see note 15 *supra*). Where the new claim contained in the further representations depends on new evidence, that evidence has to satisfy the tests applicable to the admissibility of evidence in an appeal before the Court of Appeal of 'previous unavailability, significance and credibility': see *Ladd v Marshall* [1954] 3 All ER 745, [1954] 1 WLR 1489, CA; *R v Secretary of State for the Home Department, ex p Onibiyo* [1996] QB 768, [1996] 2 All ER 901, [1996] Imm AR 370, CA (the judgment being the genesis of the rule in the Immigration Rules para 346). The new evidence in the further representations must be capable of producing a different outcome on the claim (see *R v Secretary of State for the Home Department, ex p Habibi* [1997] Imm AR 391, QBD) and must be apparently credible and the Secretary of State is entitled to make inquiries to decide if it meets this requirement (see *R v Secretary of State for the Home Department, ex p Boybeyi* [1997] Imm AR 491, CA (the new evidence need not be incontrovertible)). However, consideration of credibility does not necessarily mean consideration of the evidence; the Secretary of State may conclude that the claim is 'not capable of belief': *Nkereuwen (Elijah) v Secretary of State for the Home Department* [1999] Imm AR 267, CA. However the previous 'unavailability' provision will not prevent evidence being presented at a later stage if the claimant could not give it earlier due to trauma: *R v Secretary of State for the Home Department, ex p Ejon (Molly)* [1998] INLR 195. Where an adjudicator had reached adverse conclusions on an asylum appellant's credibility based on incorrect background information supplied to her by the Secretary of State, the rule in *Ladd v Marshall* *supra* could be distinguished so as to permit the claimant to put forward evidence that had been generally available previously

in order to contradict the evidence adduced by the Secretary of State: see *R v Secretary of State for the Home Department, ex p Kasujja (Hussein)* (17 June 1999, unreported).

19 See *Cakabay v Secretary of State for the Home Department (Nos 2 and 3)* [1999] Imm AR 176, CA (it is for the Secretary of State to decide whether a fresh claim has been made, subject only to judicial review on the normal *Wednesbury* grounds: see JUDICIAL REVIEW vol 61 (2010) PARA 602); see also *R v Secretary of State for the Home Department, ex p Ravichandran (No 3)* [1997] Imm AR 74. In *Nassir v Secretary of State for the Home Department* [1999] Imm AR 250, CA, the Court of Appeal warned against subjecting the issue to 'too close an analysis' on judicial review. In *R v Secretary of State for the Home Department, ex p Bell* [2000] Imm AR 396, QBD, it was held that where an original claim based on political opinion had been dismissed for want of credibility, it was not unreasonable of the Secretary of State to refuse to accept as a fresh claim one based on the claimant's homosexuality as this 'condition' had been known to the claimant at the time he made his first claim. The 'claim' means a 'claim for asylum' and not a claim to be a refugee on the basis of any one particular Refugee Convention reason. Obversely, convincing fresh evidence of the same risk of persecution as alleged in the first claim is capable of giving rise to a fresh claim: *R v Secretary of State for the Home Department, ex p Ravichandran (No 2)* [1996] Imm AR 418; *Ward v Secretary of State for the Home Department* [1997] Imm AR 236, CA; *R (on the application of Senkoy) v Secretary of State for the Home Department* [2001] EWCA Civ 328.

20 See the Immigration and Asylum Act 1999 s 73(1), (2), (7), (8) (s 73(2) as amended); and para 185 ante. The 'one-stop' appeals provision in s 77 (see para 185 et seq ante) does not apply to persons who appealed against immigration decisions made prior to the implementation of the Immigration and Asylum Act 1999 Pt IV (ss 56-81) (as amended) (appeals), on 2 October 2000, as appeals against such decisions, made consequent to refusals of asylum, continued under the Asylum and Immigration Appeals Act 1993 s 8 (repealed for all other purposes): see the Immigration and Asylum Act 1999 (Commencement No 6, Transitional and Consequential Provisions) Order 2000, SI 2000/2444, arts 3, 4, Sch 2 paras 1(11), 3(2). A person whose appeal under the Asylum and Immigration Appeals Act 1993 s 8 (repealed), has been finally determined may apply for leave to enter or remain on the ground that his being removed from, or required to leave, the United Kingdom, would be in breach of his rights under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the immigration officer or, as the case may be, the Secretary of State, must consider that claim and if it is refused there will lie a right of appeal against the immigration decision: see *Pardeepan* [2000] INLR 447, IAT; and *R (on the application of Kariharan) v Secretary of State for the Home Department, R (on the application of Kumarakuruparan) v Secretary of State for the Home Department* [2002] EWCA Civ 1102, CA. It has been held that the wording of the Asylum and Immigration Appeals Act 1993 s 8 (repealed) permits appeals in relation to refugee status: see *Saad v Secretary of State for the Home Department* [2001] EWCA Civ 2008.

21 Immigration and Asylum Act 1999 s 73(8), (9).

22 Ibid s 73(1), (4), (5).

23 Ibid s 73(1), (2).

24 Ibid s 73(3), (6).

25 For the purposes of the Immigration Rules paras 349-352 (as amended), 'child' means a person who is under 18 years of age or who, in the absence of documentary evidence establishing age, appears to be under that age: Immigration Rules para 349 (substituted by Statement of Changes in Immigration Rules (Cmnd 5597) (2002) para 21).

26 Immigration Rules para 349 (as substituted: see note 25 supra). A claimant, including an accompanied child, under the Immigration Rules para 349 (as substituted) may be interviewed where he makes a claim as a dependant or in his own right: Immigration Rules para 349 (as so substituted).

27 Immigration Rules para 349 (as substituted: see note 25 supra).

28 Immigration Rules para 349 (as substituted: see note 25 supra). The conditions for the grant of asylum are set out in the Immigration Rules para 334: see para 238 text and notes 8-9 ante.

29 Immigration Rules para 349 (as substituted: see note 25 supra).

30 Immigration Rules para 349 (as substituted: see note 25 supra). See *R v Secretary of State for the Home Department, ex p Fahmi* [1994] Imm AR 447.

31 Immigration Rules para 349 (as substituted: see note 25 supra). Nothing in the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 8, prevents a state from exercising effective immigration controls, provided that, when considering the deportation of an individual who has a family, the need to maintain such controls is weighed against the need to keep a family together: *R v Secretary of State for the Home Department, ex p Uzun* [1998] Imm AR 314. See also *R v Secretary of State for the Home Department, ex p Yolamba* [1997] Imm AR 564; and paras 152, 155 ante.

32 Immigration Rules para 350. When an unaccompanied child comes to the attention of officials concerned with asylum determination, they will notify the Refugee Council's non-statutory panel of advisers whose members act as a 'friend' to the child in his or her dealings with the Home Office and other government agencies: *Asylum Policy Instructions* Part 1 (Applications for asylum) Chapter 2 section 5 paragraph 3.9. Where age is in dispute, the burden is on the claimant to demonstrate that he is a minor but the practice is to give him the benefit of the doubt unless his physical appearance strongly suggests that he is over 18: *Asylum Policy Instructions* Part 1 (Applications for asylum) Chapter 2 section 5 paragraph 3.7. Medical assessment of age can only be obtained voluntarily and it is not appropriate for the Secretary of State to insist or request that such is obtained: *Asylum Policy Instructions* Part 1 (Applications for asylum) Chapter 2 section 5 paragraph 3.8.

33 Ie the Immigration Rules para 334: see para 238 text and notes 8-9 ante.

34 Immigration Rules para 351.

35 Immigration Rules para 351. The same considerations, ie, that more weight is given to an objective indication of risk than to the claimant's state of mind and understanding, should also apply to 'mentally disturbed' claimants: *Bilgin Demirci v Secretary of State for the Home Department* (16 July 1999, unreported), IAT. However, in certain circumstances, a mentally disturbed claimant's evidence may be considered unreliable, with the consequence that he cannot meet the burden of proving that he is a refugee: *Amrik Singh v Secretary of State for the Home Department* [2000] Imm AR 340, CA.

36 Immigration Rules para 351.

37 Immigration Rules para 351.

38 Immigration Rules para 352 (amended by Statement of Changes in Immigration Rules (Cmnd 5597) (2002) para 22). When an interview is necessary it should be conducted in the presence of a parent, guardian, representative or another adult who for the time being takes responsibility for the child and is not an immigration officer, an officer of the Secretary of State or a police officer: Immigration Rules para 352 (as so amended). The interviewer should have particular regard to the possibility that a child will feel inhibited or alarmed, and the child should be allowed to express himself in his own way and at his own speed: Immigration Rules para 352 (as so amended). If the child appears tired or distressed, the interview should be stopped: Immigration Rules para 352 (as so amended).

39 See the Immigration Rules paras 352A-352F (added by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 50).

40 Ie by virtue of the Refugee Convention art 1F: see para 239 text and notes 40-42 ante.

41 Immigration Rules para 352A(i)-(iv) (para 352A(i)-(iii) as added (see note 39 supra); para 352A(iv) added by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 23). A person seeking leave to enter as the spouse of a refugee requires an entry clearance for entry in this capacity: Immigration Rules para 352A(v) (as so added; renumbered by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 23).

42 See note 40 supra.

43 Immigration Rules para 352D(i)-(v) (as added (see note 39 supra); amended by Statement of Changes in Immigration Rules (Cm 5597) (2002) para 24). A person seeking leave to enter in order to join or remain with a parent who has been granted asylum in the United Kingdom requires an entry clearance for entry in this capacity: Immigration Rules para 352D(vi) (as so added).

UPDATE

238-244 Claims for Asylum

Education about the nature of the asylum process may now be provided to asylum-seekers through programmes of induction arranged by the Secretary of State: see further PARA 238A.

240 Consideration of asylum [or human rights] claims

TEXT AND NOTES--An asylum seeker whose application is subject to unlawful delay and who suffers provable loss as a result does not have a financial remedy: *R (on the*

application of MK) v Secretary of State for the Home Department [2010] EWCA Civ 115, [2010] All ER (D) 282 (Feb).

TEXT AND NOTES 1-7--These provisions also apply to human rights claims: Immigration Rules para 342 (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 299) para 4). As to procedure in relation to fresh asylum or human rights claims made in the United Kingdom see Immigration Rules para 353 (added by Statement of Changes in Immigration Rules (HC Paper (2003-04) no 1112) para 20; and amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 420)). See *ZT (Kosovo) v Secretary of State for the Home Department* [2009] UKHL 6, [2009] 3 All ER 976; *R (on the application of Omer) v Secretary of State for the Home Department*; *R (on the application of Min) v Secretary of State for the Home Department* [2008] EWHC 1604 (Admin), [2008] All ER (D) 351 (Jun); *R (on the application of Mehari) v Secretary of State for the Home Department* [2009] EWHC 3464 (Admin), [2010] All ER (D) 154 (Jan); *R (on the application of AK (Sri Lanka)) v Secretary of State for the Home Department* [2009] EWCA Civ 447, [2010] 1 WLR 855, [2009] All ER (D) 176 (Jun) (further submissions).

As to the form of travel documents to be issued to a person granted asylum in the United Kingdom see Immigration Rules para 344A (Immigration Rules paras 344A-344C added by Statement of Changes in Immigration Rules (Cm 6918) (2006) para 11). The Secretary of State will not impose conditions restricting the employment or occupation in the United Kingdom of a person granted asylum or humanitarian protection: Immigration Rules para 344B. A person who is granted asylum or humanitarian protection will be provided, as soon as possible after such grant, with access to information in a language that he may reasonably be supposed to understand which sets out the rights and obligations relating to that status: Immigration Rules para 344C.

A claimant's whole story and its ingredients must be considered against the available country evidence, reliable expert evidence and other factors, even where the story may seem in part, or even mostly, unlikely, as it does not mean it is untrue: *HK v Secretary of State for the Home Department* [2006] EWCA Civ 1037, [2006] All ER (D) 281 (Jul). See also *WM (Democratic Republic of Congo) v Secretary of State for the Home Department*; *AR (Afghanistan) v Secretary of State for the Home Department* [2006] EWCA Civ 1495, [2006] All ER (D) 109 (Nov).

As to a claimant's credibility see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 8; and PARA 240A.

TEXT AND NOTES 2, 3, 5-7--Immigration Rules paras 340, 341, 343, 344 deleted: Statement of Changes in Immigration Rules (Cm 6918) (2006) paras 7-10.

NOTE 5--See *R (on the application of Mohamad) v Secretary of State for the Home Department* [2002] EWHC 2496 (Admin), [2002] All ER (D) 480 (Nov) (removal to Kurdish Autonomous Area of Iraq). See also *AE v Secretary of State for the Home Department* [2003] EWCA Civ 1032, [2003] Imm AR 609 (relocation of claimant to safe part of Sri Lanka); *Hysi v Secretary of State for the Home Department* [2005] EWCA Civ 711, [2005] All ER (D) 135 (Jun); *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49, [2008] 4 All ER 190; *KH (Sudan) v Secretary of State* [2008] EWCA Civ 887, [2008] All ER (D) 08 (Aug) (approach to country guidance); and *OD (Ivory Coast) v Secretary of State for the Home Department* [2008] EWCA Civ 1299, [2008] All ER (D) 08 (Dec) (application of country guidance cases).

NOTE 6--See *R (on the application of FH) v Secretary of State for the Home Department* [2007] EWHC 1571 (Admin), [2007] All ER (D) 69 (Jul) (system devised to deal with backlog of cases was lawful).

TEXT AND NOTES 15-18--Immigration Rules para 346 deleted: Statement of Changes in Immigration Rules (HC Paper (2003-04) no 1112) para 19).

NOTE 15--Where there is no difference in substance between the ground relied on in the claim being considered and the ground raised in the previous appeal, the asylum seeker's representations are unlikely to constitute a fresh claim for asylum: *R (on the application of Borak) v Secretary of State for the Home Department* [2004] EWHC 1861 (Admin), [2005] ACD 112; *R (on the application of H) v Secretary of State for the Home Department* [2008] EWHC 2174 (Admin), [2008] All ER (D) 68 (Sep). See also *R (on the application of Jibril) v Secretary of State for the Home Department* [2009] All ER (D) 192 (May); *R (on the application of ZO (Somalia)) v Secretary of State for the Home Department*; *R (on the application of MM (Burma)) v Secretary of State for the Home Department*; *R (on the application of DT (Eritrea) v Secretary of State for the Home Department* [2009] EWCA Civ 442, [2009] 1 WLR 2477, [2009] All ER (D) 184 (May); *R (on the application of DE) v Secretary of State for the Home Department* [2009] EWHC 2300 (Admin), [2009] All ER (D) 119 (Sep); and *KH (Afghanistan) v Secretary of State for the Home Department* [2009] EWCA Civ 1354, [2009] All ER (D) 133 (Dec).

NOTE 20--See *Balamurali v Secretary of State for the Home Department* [2003] EWCA Civ 1806, [2003] All ER (D) 250 (Dec).

NOTE 23--See *R (on the application of J) v Secretary of State for the Home Department* [2009] EWHC 705 (Admin), [2009] All ER (D) 21 (Apr).

TEXT AND NOTES 25-31--Immigration Rules para 349 (substituted by Statement of Changes in Immigration Rules (Cm 6918) (2006) para 12; and amended by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 28) paras 2-4; Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) paras 23, 24) extends to applications for humanitarian protection and the references to spouse include civil partner, unmarried or same-sex partner. For the meaning of 'civil partner' see PARA 121.

As to the requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the unmarried or the same-sex partner of a refugee see the Immigration Rules para 352AA (added by Statement of Changes in Immigration Rules (Cm 6918) (2006) para 13). Such a person may be granted limited leave to enter the United Kingdom provided a valid United Kingdom entry clearance for entry in this capacity is produced to the immigration officer on arrival, and may be granted limited leave remain provided the Secretary of State is satisfied that the specified requirements of the Immigration Rules para 352AA are met: Immigration Rules paras 352BA, 352CA (both added by Statement of Changes in Immigration Rules (Cm 6918) (2006) paras 14, 15).

As to the requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the spouse or civil partner of a person granted humanitarian protection in the United Kingdom see the Immigration Rules paras 352FA-352FC (Immigration Rules paras 352FA-352I added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 28) para 5); as to the requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the unmarried or the same-sex partner of a of a person granted humanitarian protection in the United Kingdom see the Immigration Rules paras 352FD-352FF; and as to the requirements to be met by a person seeking leave to enter or remain in the United Kingdom in order to join or remain with their parent who has been granted humanitarian protection in the United Kingdom see the Immigration Rules paras 352FG-352FI.

NOTES 32-35--Guidance has been given on the assessment when determining whether an applicant asylum seeker is to be correctly classified as a child: *R (on the application of B) v Merton LBC* [2003] EWHC 1689 (Admin), [2003] 4 All ER 280. See also *R (on the*

application of C) v Merton LBC [2005] EWHC 1753 (Admin), [2005] 3 FCR 42 (local authority has to demonstrate good reason for departing from expert's age assessment); *R (on the application of A) v Liverpool City Council* [2007] EWHC 1477 (Admin), [2007] All ER (D) 307 (Jun) (local authority must make final age determination based on all relevant information and not simply rely on expert report); *R (on the application of HBH) v Secretary of State for the Home Department* [2009] EWHC 928 (Admin), [2009] All ER (D) 44 (May) (appearance and demeanour alone not sufficiently principled and grounded basis for assessing age of asylum-seeker); *A v Croydon LBC; WK v Secretary of State for the Home Department* [2009] EWHC 939 (Admin), [2010] 1 FLR 193, [2009] All ER (D) 70 (May) (only in rare cases would evidence from expert persuade decision maker to reach view different to that of social workers).

NOTES 37, 38--See *R (on the application of T) v Enfield LBC* [2004] EWHC 2297 (Admin), [2005] 3 FCR 55 (decision that claimant was an adult overturned because assessment interview had been unduly hostile bearing in mind claimant's age and vulnerability). See also *AA (Afghanistan) v Secretary of State for the Home Department* [2007] EWCA Civ 12, [2007] All ER (D) 250 (Jan) (failure to interpret correctly and apply policy regarding the interviewing of unaccompanied minor).

NOTE 38--Immigration Rules para 352 substituted: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) para 25. As to safeguards in relation to an application by an unaccompanied child see Immigration Rules para 352ZA, 352ZB (added by Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) paras 26, 27).

TEXT AND NOTES 39-41--These provisions apply also to the civil partner of a refugee and the reference to marriage is now to marriage or civil partnership: Immigration Rules paras 352A-352C (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 37).

NOTE 39--See *AB (Democratic Republic of Congo) v Secretary of State for the Home Department* [2007] All ER (D) 486 (Oct), CA (consideration as to whether reasonable to expect refugee wife to relocate with claimant); *DL (DRC) v Entry Clearance Officer (Pretoria)*; *ZN (Afghanistan) v Entry Clearance Officer (Karachi)* [2008] EWCA Civ 1420, [2009] 1 FLR 1128, [2009] 2 FCR 709 (Immigration Rules paras 352A, D only apply in cases where the sponsor was currently a recognised refugee).

NOTE 41--The interference with family life resulting from not allowing a husband and his heavily pregnant wife in a genuine and subsisting marriage to cohabit has consequences of such gravity as potentially to engage the operation of the European Convention on Human Rights art 8 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 149): *A (Afghanistan) v Secretary of State for the Home Department* [2009] EWCA Civ 825, [2009] All ER (D) 344 (Jul).

TEXT AND NOTE 42--For 'is unmarried' read 'is unmarried and is not a civil partner': Immigration Rules para 352D (amended by Statement of Changes in Immigration Rules (HC Paper (2005-06) no 582) para 38).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(1) CLAIMS FOR ASYLUM/240A. Claimant's credibility.

240A. Claimant's credibility.

In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim¹ or a human rights claim², a deciding authority³ must take account of specified

behaviour as damaging the claimant's credibility⁴. Any behaviour by the claimant that the deciding authority thinks

- 624 (1) is designed or likely to conceal information;
- 625 (2) is designed or likely to mislead; or
- 626 (3) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant⁵.

The deciding authority must also take account of failure by the claimant to

- 627 (a) take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country⁶;
- 628 (b) make an asylum claim or human rights claim before being notified of an immigration decision⁷, unless the claim relies wholly on matters arising after the notification⁸; and
- 629 (c) make an asylum claim or human rights claim before being arrested under an immigration provision⁹, unless he had no reasonable opportunity to make the claim before the arrest, or the claim relies wholly on matters arising after the arrest¹⁰.

These grounds do not prevent a deciding authority from determining not to believe a statement on other grounds of behaviour¹¹.

1 'Asylum claim' has the meaning given by the Nationality, Immigration and Asylum Act 2002 s 113(1); Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 8(7).

2 'Human rights claim' has the meaning given by the 2002 Act s 113(1); 2004 Act s 8(7).

3 'Deciding authority' means (1) an immigration officer; (2) the Secretary of State; (3) the Asylum and Immigration Tribunal; or (4) the Special Immigration Appeals Commission: *ibid* s 8(7).

4 *Ibid* s 8(1). The following kinds of kinds of behaviour will be treated as designed or likely to conceal information or to mislead: (1) failure without reasonable explanation to produce a passport on request to an immigration officer or to the Secretary of State; (2) the production of a document which is not a valid passport as if it were; (3) the destruction, alteration or disposal, in each case without reasonable explanation, of a passport; (4) the destruction, alteration or disposal, in each case without reasonable explanation, of a ticket or other document connected with travel; and (5) failure without reasonable explanation to answer a question asked by a deciding authority: s 8(3). 'Passport' includes a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport: s 8(7). A passport produced by or on behalf of a person is valid for the purposes of head (2) if it (a) relates to the person by whom or on whose behalf it is produced; (b) has not been altered otherwise than by or with the permission of the authority who issued it; and (c) was not obtained by deception: s 8(8). While the factors of s 8 are to be taken into account in assessing credibility, they do not dictate that relevant damage to credibility will inevitably result: *JT (Cameroon) v Secretary of State for the Home Department* [2008] EWCA Civ 878, [2008] All ER (D) 348 (Jul).

5 2004 Act s 8(2).

6 *Ibid* s 8(4). 'Safe country' means a country specified under Sch 3 Pt 2. This also applies to a claim of entitlement to remain in a country other than the United Kingdom made by reference to the rights that a person invokes in making an asylum claim or a human rights claim in the United Kingdom: s 8(9).

7 'Immigration decision' means (1) refusal of leave to enter the United Kingdom; (2) refusal to vary a person's leave to enter or remain in the United Kingdom; (3) grant of leave to enter or remain in the United Kingdom; (4) a decision that a person is to be removed from the United Kingdom by way of directions under the Immigration and Asylum Act 1999 s 10(1)(a), (b), (ba) or (c); (5) a decision that a person is to be removed from the United Kingdom by way of directions under the Immigration Act 1971 Sch 2 paras 8-12; (6) a decision to make a deportation order under s 5(1); and (7) a decision to take action in relation to a person in connection with extradition from the United Kingdom: 2004 Act s 8(7).

8 *Ibid* s 8(5). 'Notification' means notified in such a manner as may be specified by regulations made by the Secretary of State: s 8(7). Such regulations (1) may make incidental, consequential or transitional provision; (2)

will be made by statutory instrument; and (3) will be subject to annulment in pursuance of a resolution of either House of Parliament: s 8(11). See the Immigration (Claimant's Credibility) Regulations 2004, SI 2004/3263.

9 'Immigration provision' means the Immigration Act 1971 ss 28A, 28AA, 28B, 28C and 28CA; Sch 2 para 17; the Extradition Act 1989 or 2003; and the 2004 Act s 14.

10 Ibid s 8(6).

11 Ibid s 8(12).

UPDATE

238-244 Claims for Asylum

Education about the nature of the asylum process may now be provided to asylum-seekers through programmes of induction arranged by the Secretary of State: see further PARA 238A.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(1) CLAIMS FOR ASYLUM/241. Exception to consideration of asylum claim where there is a safe third country.

241. Exception to consideration of asylum claim where there is a safe third country.

Except in the following circumstances, a person who makes a claim for asylum¹ (the claimant) may not be removed from, or required to leave, the United Kingdom² during the period beginning when he makes his claim for asylum and ending when the Secretary of State³ gives him notice of the decision on the claim⁴. The claimant may be removed from the United Kingdom to a member state of the European Union if the Secretary of State has certified that the member state has accepted that, under standing arrangements⁵ it is the responsible state in relation to the claimant's claim for asylum, and, in his opinion, the claimant is not a national or citizen of the member state to which he is to be sent, and the certificate has not been set aside on an appeal⁶. In determining whether a person in relation to whom a certificate has been issued may be removed from the United Kingdom, a member state is to be regarded as a place where a person's life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion, and a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention⁷.

If the Secretary of State intends to remove a claimant from the United Kingdom to a member state, or a territory which forms part of a member state, otherwise than under standing arrangements, or to a designated country⁸ other than a member state, then the claimant may be removed if the Secretary of State has certified that, in his opinion, certain conditions⁹ are fulfilled, and the certificate has not been set aside on an appeal¹⁰. If the Secretary of State intends to remove a claimant from the United Kingdom to a country which is not a member state, or a designated country, then the Secretary of State may remove the claimant if he has certified that, in his opinion, that certain conditions¹¹ are fulfilled, the certificate has not been set aside on an appeal, and the time for giving notice of such an appeal has expired and no such appeal is pending¹².

Where the Secretary of State is satisfied that the specified conditions¹³ are fulfilled he will normally refuse the asylum claim and issue a certificate¹⁴ without substantive consideration of the asylum claim¹⁵. The Secretary of State has a discretion whether or not to remove an asylum claimant to a safe third country when the legal conditions for doing so are fulfilled¹⁶. However, his decision as to whether to exercise this discretion favourably to a claimant cannot be

challenged on an appeal to an adjudicator other than on human rights or racial discrimination grounds¹⁷ and would only be challengeable on judicial review if it could be shown that the Secretary of State had acted contrary to stated policy¹⁸. Similarly, in the absence of his acting contrary to policy, the Secretary of State's decision to remove a claimant under the provisions of the Dublin Convention¹⁹ and to issue a certificate in relation to the removal of the claimant to a member state²⁰, cannot be challenged on the basis that he should have exercised his discretion and decided to examine the claim himself²¹. Where the Secretary of State had previously issued a third country certificate in an individual claimant's case for his removal to a member state under 'standing arrangements'²² but removal had not been effected due to the circumstances in relation to that third country meaning that the certification was arguably unlawful²³, the Secretary of State could re-certify and the certification would now be lawful²⁴.

1 For the meaning of 'claim for asylum' see para 238 ante.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 As to the Secretary of State see para 2 ante.

4 Immigration and Asylum Act 1999 s 15(1). Section 15(1) does not prevent directions for the claimant's removal being given during the relevant period, or a deportation order being made against him during that period, but no such direction or order is to have effect during that period: s 15(2), (3).

5 'Standing arrangements' means arrangements in force as between member states for determining which state is responsible for considering claims for asylum: *ibid* s 11(4). Currently these arrangements are contained in the Convention determining the state responsible for examining applications for asylum lodged in one of the member states of the European Communities (Dublin, 15 June 1990; TS 72 (1997); Cmd 3806) ('the Dublin Convention') in force from 1 September 1997. As to the Secretary of State's duty to consider the Dublin Convention when considering a claim for asylum see *R v Secretary of State for the Home Department, ex p Kerrouche (No 2)* [1998] Imm AR 173 (the Dublin Convention cannot apply to decisions made prior to its coming into force). However, the ratification of the Dublin Convention does not give rise to an enforceable right or a legitimate expectation that claims for asylum will be considered in accordance with it: *Behluli v Secretary of State for the Home Department* [1998] Imm AR 407, CA; *Zeqiri v Secretary of State for the Home Department* [2001] EWCA Civ 342, CA, *re*vsd [2002] UKHL 3; *R v Secretary of State for the Home Department, ex p Gjoka and Shefki Gashi* (15 June 2000, unreported), QBD.

6 Immigration and Asylum Act 1999 s 11(2). Section 11(2) refers to appeals alleging racial discrimination or a breach of human rights under s 65 (as amended): see para 179 ante. Unless the appeal has been certified as manifestly unfounded under s 72(2)(a) (as amended) (see para 181 ante), a claimant is not to be removed from the United Kingdom if he has an appeal under s 65 (as amended) pending, or before the time for giving notice of such an appeal has expired: s 11(3). A person against whom a certificate is issued under s 11(2) may not appeal while remaining in the United Kingdom against the certificate on the ground that any of the conditions applicable to the certificate was not satisfied when the certificate was issued or has since ceased to be satisfied: see ss 71, 72(2)(b); and para 181 ante.

7 *Ibid* s 11(1). The Refugee Convention is the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906). A certificate issued under the Immigration and Asylum Act 1999 s 11(2) cannot be impugned on judicial review on grounds that the member state is not properly to be regarded as a safe third country: *R (on the application of Ibrahim) v Secretary of State for the Home Department* [2001] EWCA Civ 519; *R (on the application of Thangarasa) v Secretary of State for the Home Department* [2001] EWHC 420 (Admin) (*affd* *R (on the application of Yogathas and Thangarasa v Secretary of State for the Home Department* [2001] EWCA Civ 1611); *R (on the application of Samer) v Secretary of State for the Home Department* [2001] EWHC 545 (Admin), [2002] Imm AR 190.

8 I.e. a country other than a member state which is designated by order made by the Secretary of State for the purposes of the Immigration and Asylum Act 1999 s 12: s 12(1)(b). The countries so designated are: Canada, Norway, Switzerland and the United States of America: Asylum (Designated Safe Third Countries) Order 2000, SI 2000/2245, art 3. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante.

9 The conditions are that: (1) the claimant is not a national or citizen of the country to which he is to be sent; (2) the claimant's life and liberty would not be threatened there by reason of his race, religion, nationality, membership of a particular social group, or political opinion; and (3) the government of that country would not send him to another country otherwise than in accordance with the Refugee Convention: Immigration and

Asylum Act 1999 s 12(7). See also Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) ('the Immigration Rules') para 345(1) (para 345 substituted by Statement of Changes in Immigration Rules (Cm 3365) (1996) para 15). In determining whether there is no real risk of the third country sending the claimant on to a 'fourth' country other than in accordance with the Refugee Convention, the Secretary of State is not under any obligation to demonstrate that the fourth country is safe; he need only demonstrate that the third country, to which he proposes to send the claimant, will deal with either the claim for asylum or with any further transfer in accordance with the Refugee Convention: *Martinas v Special Adjudicator* [1995] Imm AR 190, CA; *R v Secretary of State for the Home Department, ex p Sirghi* [1998] Imm AR 310. Evidence of procedural unfairness in the third country in relation to possible consideration or further transfer could mean that it is not safe: *R v Secretary of State for the Home Department, ex p Dahmas* [1999] All ER (D) 1280, CA; *R v Secretary of State for the Home Department, ex p Iyadurai (No 2)* [1999] Imm AR 202. See also *R v Secretary of State for the Home Department, ex p Canbolat* [1998] 1 All ER 161, [1997] 1 WLR 1569, [1997] Imm AR 442, CA. The possibility that the third country will simply return the claimant to the United Kingdom does not mean that it is not safe for certification purposes: *R v Secretary of State for the Home Department, ex p Mehari* [1994] QB 474, [1994] 2 All ER 494, [1994] Imm AR 151; see also *R v Secretary of State for the Home Department, ex p Guhad* [1997] Imm AR 1. However, there is no permissible range of interpretation of the Refugee Convention such that the Secretary of State can be satisfied that the condition in head (3) supra is fulfilled if the third country in question will not interpret the Refugee Convention correctly and recognise as a refugee a person who is subject to persecution by non-state actors in his home state and his home state is unable to afford him protection against those factions: *R v Secretary of State for the Home Department, ex p Adan* [2001] 2 AC 477, [2001] 1 All ER 593, HL.

10 Immigration and Asylum Act 1999 s 12(1), (2). As to appeals see s 12(3); and note 6 supra. A person against whom a certificate is issued under s 12(2) may not appeal while remaining in the United Kingdom against the certificate on the ground that any of the conditions applicable to the certificate was not satisfied when the certificate was issued or has since ceased to be satisfied: see ss 71, 72(2)(b); and para 181 ante.

11 See note 9 supra.

12 Immigration and Asylum Act 1999 s 12(4), (5). An appeal may be brought under s 65 (as amended) (see para 179 ante) or s 71 (see para 181 ante). An appeal under s 65 (as amended) is not to be regarded as pending if the Secretary of State has issued a certificate under s 72(2)(a) (as amended) (see para 181 ante) in relation to the allegation on which it is founded: s 12(6). However, a person against whom a certificate is issued under s 12(5) may appeal against it to an adjudicator on the ground that any of the conditions applicable to the certificate was not satisfied when the certificate was issued or has since ceased to be satisfied and may do so while remaining in the United Kingdom: s 71(2).

13 Ie the conditions set out in *ibid* s 11(2) (see the text to note 6 supra) or s 12(7) (see note 9 supra).

14 Ie under *ibid* s 11 or s 12.

15 Immigration Rules para 345(1) (as substituted: see note 9 supra; and amended by Statement of Changes in Immigration Rules (Cm 4851) (2000) para 47). The Secretary of State must not remove an asylum claimant without substantive consideration of his claim unless: (1) the asylum claimant has not arrived in the United Kingdom directly from the country in which he claims to fear persecution and has had an opportunity, at the border or within the third country or territory, to make contact with the authorities of that third country in order to seek their protection; or (2) there is other clear evidence of his admissibility to a third country or territory; and provided that he is satisfied that a case meets these criteria, the Secretary of State is under no obligation to consult the authorities of the third country or territory before removing the claimant to that country or territory: Immigration Rules para 345(2) (as substituted: see note 9 supra). To have had such an opportunity, it is sufficient that the claimant knows that he is in a country other than the one from which he is fleeing; he does not need to know which country, or the name of the country, he is in: see *R v Special Adjudicator, ex p Kandasamy* [1994] Imm AR 333. A claimant who had only remained airside in transit at a third country's airport would not normally be removed there: see *R v Secretary of State for the Home Department, ex p Arias* [1997] Imm AR 385, citing a Ministerial Statement of 23 January 1996. The Secretary of State does not have to be satisfied that a person would be permitted to remain in a country before concluding that he would be readmitted to that country: *R v Secretary of State for the Home Department, ex p Carvalho* [1996] Imm AR 435. He is also not obliged to make available to an adjudicator hearing an appeal against a certificate (under the Immigration and Asylum Act 1999 s 71(2): see note 12 supra) the material on which he bases a 'safe country' certificate: *Abdi v Secretary of State for the Home Department* [1996] 1 All ER 641, [1996] 1 WLR 298, [1996] Imm AR 288, HL. Where a claim for asylum has already been made to a safe third country from which the claimant had travelled to the United Kingdom, and that other country will accept the claimant even though a determination on the asylum claim has not been made, the claim in the United Kingdom may be refused without substantive consideration of the claim to refugee status: *Makonda v Special Adjudicator* [1996] Imm AR 180, CA. Although asylum assessment procedures may be defective in a third country, the Secretary of State is entitled to accept assurances received from the third country that it observes its obligations under the Dublin Convention and return the asylum-seeker to that country for it to determine his asylum claim: *Mbanja v Secretary of State for the Home Department* [1999] Imm AR 508, CA. However the Secretary of State accepted

in the Court of Appeal in *R v Secretary of State for the Home Department, ex p Dahmas* [1999] All ER (D) 1280, CA, that he must satisfy himself that a previous refusal in a third country was not 'flawed by reason of some manifest irrationality or serious procedural irregularity' before issuing a certificate.

16 See the Immigration Rules para 345(1) (as substituted and amended); and the text and note 15 supra.

17 See *R v Secretary of State for the Home Department, ex p Mehari* [1994] QB 474, [1994] 2 All ER 494, [1994] Imm AR 151. Removal to a third country in consequence of a certificate can be appealed against to an adjudicator under the Immigration and Asylum Act 1999 s 65(1) (as amended) on the grounds that removal to the third country would be contrary to the appellant's human rights or racially discriminatory: see para 179 ante. However, the Secretary of State can prevent such an appeal by certifying that the allegation that such removal would be in breach of human rights or racially discriminatory is manifestly unfounded: see s 72(2)(a); and para 181 ante.

18 The Secretary of State's stated policy is not to remove an asylum claimant to a safe third country where the claimant's spouse is in the United Kingdom or where the claimant is an unmarried minor and a parent is in the United Kingdom or where the claimant has an unmarried minor child in the United Kingdom (in all cases 'in the United Kingdom' should be taken as meaning with leave to enter or remain or on temporary admission as an asylum-seeker: see *Conteh v Secretary of State for the Home Department* [1992] Imm AR 594, CA). As to the Secretary of State's statement of policy where family ties are claimed to the United Kingdom in third country cases see 389 HC Official Report (6th series), 22 July 2002, written answers col 860. Where the Secretary of State issues a safe third country certificate in contravention of this policy, the certificate can be quashed on judicial review: *R v Secretary of State for the Home Department, ex p Nicholas* [2000] Imm AR 334.

19 Is the Convention determining the state responsible for examining applications for asylum lodged in one of the member states of the European Communities (Dublin, 15 June 1990; TS 72 (1997); Cmd 3806).

20 Is under the Immigration and Asylum Act 1999 s 11.

21 See *R (on the application of Ibrahim) v Secretary of State for the Home Department* [2001] EWCA Civ 519; *R (on the application of Duman) v Secretary of State for the Home Department* [2001] EWHC 168 (Admin); *R (on the application of Thangarasa) v Secretary of State for the Home Department* [2001] EWHC 420 (Admin) (affd *R (on the application of Yogathas and Thangarasa v Secretary of State for the Home Department* [2001] EWCA Civ 1611); *R (on the application of Hassan Basheer Hatim) v Secretary of State for the Home Department* [2001] EWHC 574 (Admin).

22 See note 5 supra.

23 See *R v Secretary of State for the Home Department, ex p Adan* [2001] 2 AC 477, [2001] 1 All ER 593, HL; *Gashi v Secretary of State for the Home Department* [1999] Imm AR 415, CA; *R v Secretary of State for the Home Department, ex p Bouheraoua* [2001] EWCA Civ 747.

24 See *R (on the application of Samer) v Secretary of State for the Home Department* [2001] EWHC 545 (Admin); *R (on the application of Agim Gashi and Kiche) v Secretary of State for the Home Department* [2001] EWHC 622 (Admin). However, where the Secretary of State has adopted a policy to decide several claims in accordance with the outcome of a test case and keeps to that policy despite a relevant change in circumstances, it may be unlawful for him not to act in accordance with the outcome notwithstanding the change in circumstances: *Zeqiri v Secretary of State for the Home Department* [2001] EWCA Civ 342; revsd on its facts [2002] UKHL 3.

UPDATE

238-244 Claims for Asylum

Education about the nature of the asylum process may now be provided to asylum-seekers through programmes of induction arranged by the Secretary of State: see further PARA 238A.

241 Exception to consideration of asylum claim where there is a safe third country

TEXT AND NOTES--1999 Act ss 11, 12 repealed: Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 33(2), Sch 4. Provision relating to the removal of an asylum seeker to a safe third country without consideration of his asylum claim is now made

by the 2004 Act Sch 3, which distinguishes between (1) countries which are deemed safe for the purposes of the Refugee Convention and for claims that onward removal from the state would breach the European Convention on Human Rights so that all other human rights claims against removal must be certified by the Secretary of State as clearly unfounded unless he is satisfied that they are not; (2) countries which are deemed safe for the purposes of the Refugee Convention so that all human rights claims against removal must be certified by the Secretary of State as clearly unfounded unless he is satisfied that they are not; and (3) countries which are deemed safe for the purposes of the Refugee Convention only human rights claims against removal may be certified by the Secretary of State as clearly unfounded. The 2004 Act Sch 3 has been found not to preclude a general consideration of whether a listed state's laws and practices comply with the right not to be subjected to torture or ill treatment contrary to the European Convention on Human Rights art 3 and, therefore, is not incompatible with art 3: see *Secretary of State for the Home Department v Nasser* [2008] EWCA Civ 464, [2010] 1 AC 1, [2009] 1 All ER 116 (affd [2009] UKHL 23, [2010] 1 AC 1, [2009] 3 All ER 774).

TEXT AND NOTE 4--1999 Act s 15 repealed: Nationality, Immigration and Asylum Act 2002 s 77(5), Sch 9. Now, while a person's claim for asylum is pending he may not be removed from the United Kingdom in accordance with a provision of the Immigration Acts, or required to leave the United Kingdom in accordance with a provision of the Immigration Acts: 2002 Act s 77(1). 'Claim for asylum' means a claim by a person that it would be contrary to the United Kingdom's obligations under the Refugee Convention to remove him from or require him to leave the United Kingdom, and a person's claim is pending until he is given notice of the Secretary of State's decision on it: s 77(2). However, s 77 does not prevent any of the following while a claim for asylum is pending: (1) the giving of a direction for the claimant's removal from the United Kingdom; (2) the making of a deportation order in respect of the claimant; or (3) the taking of any other interim or preparatory action: s 77(3).

NOTE 4--The 1999 Act s 15 does not preclude the court, in the exercise of its wardship jurisdiction, from returning a child of an asylum applicant to his country of habitual residence: *Re S (Children) (Abduction: Asylum Appeal)* [2002] EWCA Civ 843, [2002] 1 WLR 2548.

NOTE 5--See *R (on the application of Lika) v Secretary of State for the Home Department* [2002] EWCA Civ 1855, [2002] All ER (D) 230 (Dec) (applicant had previously resided in Germany; claim for asylum in United Kingdom refused). See also *R (on the application of G) v Secretary of State for the Home Department* [2005] All ER (D) 131 (Apr), CA (applicant had previously applied for asylum in Italy; claim for asylum in United Kingdom refused); and *R (on the application of A) v Secretary of State for the Home Department* [2006] All ER (D) 178 (Oct), CA (applicant had previously applied for asylum in Italy; claim for asylum in United Kingdom refused).

NOTE 7--*Yogathas and Thangarasa*, cited, affirmed: [2002] UKHL 36, [2002] 4 All ER 800, [2002] 3 WLR 1276.

NOTE 9--Immigration Rules para 345 now as substituted by Statement of Changes in Immigration Rules (HC Paper (2003-04) no 1112) para 18.

NOTE 15--Immigration Rules para 345(2) amended, para 345(2A) added: Statement of Changes in Immigration Rules (HC Paper (2007-08) no 82) para 22.

NOTE 18--See *R (on the application of Nadarajah) v Secretary of State for the Home Department*; *R (on the application of Abdi) v Secretary of State for the Home Department* [2005] EWCA Civ 1363, [2005] All ER (D) 283 (Nov).

NOTE 24--See *R (on the application of Rashid) v Secretary of State for the Home Department* [2005] EWCA Civ 744, (2005) Times, 12 July (Secretary of State misused power by refusing refugee status to applicant who should have been granted it pursuant to earlier policy, despite change in circumstances); *R (on the application of S) v Secretary of State for the Home Department* [2007] EWCA Civ 546, [2007] All ER (D) 193 (Jun) (postponement of older asylum applications in order to meet targets for dealing with new applications unlawful and an abuse of power); *R (on the application of Ghaleb) v Secretary of State for the Home Department* [2008] EWHC 2685 (Admin), [2008] All ER (D) 80 (Dec) (Secretary of State's decision not to treat case as truly exceptional not irrational or unlawful).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(1) CLAIMS FOR ASYLUM/242. Fingerprinting and detention of persons who claim asylum.

242. Fingerprinting and detention of persons who claim asylum.

Asylum claimants are amongst the categories of persons who can be fingerprinted¹.

Asylum claimants may be detained under normal immigration powers². It is lawful for the Secretary of State to detain asylum claimants for a period of seven days in order to consider and determine their claims for asylum³.

¹ See para 150 ante.

² See paras 156, 166 ante. Similarly, asylum claimants can be released on temporary admission (see para 212 ante) or be granted bail (see paras 213 et seq ante).

³ Such detention is lawful in terms of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5 as it amounts to a legitimate and proportionate detention of a person to prevent his effecting an unauthorised entry into the country within the meaning of art 5(1)(f): *R (on the application of Saadi) v Secretary of State for the Home Department* [2001] EWCA Civ 1512, [2001] 4 All ER 961, [2001] 1 WLR 356. However, prolonged temporary admission becomes unlawful when there is no realistic prospect of the removal of asylum-seekers whose claims have been rejected: *R (on the application of Hwez and Khadir) v Secretary of State for the Home Department* [2002] EWHC 1597 (Admin). As to the Secretary of State see para 2 ante.

UPDATE

238-244 Claims for Asylum

Education about the nature of the asylum process may now be provided to asylum-seekers through programmes of induction arranged by the Secretary of State: see further PARA 238A.

242 Fingerprinting and detention of persons who claim asylum

NOTE 3--See *R (on the application of I) v Secretary of State for the Home Department*; *R (on the application of O) v Secretary of State for the Home Department* [2005] EWHC 1025 (Admin), (2005) Times, 10 June (refusal by Secretary of State to release asylum-seekers after paediatrician's report concluded they were under the age of 18 was irrational).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(1) CLAIMS FOR ASYLUM/243. Statutory appeal rights for claimants refused asylum.

243. Statutory appeal rights for claimants refused asylum.

In certain circumstances, a person whose claim for asylum¹ has been refused may appeal² to an adjudicator³, against a consequent immigration decision⁴, on the ground that being removed from or required to leave the United Kingdom⁵ would be contrary to the United Kingdom's obligations under the Refugee Convention⁶.

However, a person may not appeal to an adjudicator against a refusal of leave to enter, a variation of leave or a decision to deport or remove him if the Secretary of State certifies that the decision was made in the interests of national security⁷.

Where, as above, a person may not appeal to an adjudicator because the Secretary of State has invoked the interests of national security, the person may instead appeal to the Special Immigration Appeals Commission⁸. In certain circumstances, the Special Immigration Appeals Commission may, instead of determining the appeal to it, quash the certificate and remit the appeal to an adjudicator⁹.

Normally a party to an appeal before an adjudicator may, if dissatisfied with his determination, appeal to the Immigration Appeal Tribunal¹⁰. However, where a person claims that it would be contrary to the United Kingdom's obligations under the Refugee Convention for him to be removed from or required to leave the United Kingdom, he has no right to appeal to the Immigration Appeal Tribunal if the Secretary of State certifies that in his opinion the evidence adduced in support of the claim does not establish a reasonable likelihood that the appellant has been tortured in the country to which he is to be sent and that certain conditions apply to the claim¹¹.

1 For the meaning of 'claim for asylum' see para 238 ante. As to second or subsequent asylum claims see para 240 ante.

2 See under the Immigration and Asylum Act 1999 s 69; see para 180 ante.

3 For the meaning of 'adjudicator' see para 174 note 2 ante.

4 A person may not appeal under the Immigration and Asylum Act s 69, unless before the time of the making of the immigration decision, he has made a claim for asylum: see s 70(7)(a); and para 180 ante. See note 1 supra.

5 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

6 See the Immigration and Asylum Act 1999 ss 69, 70; and para 180 ante. As to the Refugee Convention see the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906).

7 See the Immigration and Asylum Act 1999 s 70; and para 180 ante.

8 See the Special Immigration Appeals Commission Act 1997 s 2 (as amended); and para 184 ante.

9 See *ibid* s 4 (as amended); and para 189 ante.

10 See the Immigration and Asylum Act 1999 s 58, Sch 4 para 22; and para 188 ante.

11 See *ibid* Sch 4 para 9; and para 179 ante.

UPDATE

238-244 Claims for Asylum

Education about the nature of the asylum process may now be provided to asylum-seekers through programmes of induction arranged by the Secretary of State: see further PARA 238A.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(1) CLAIMS FOR ASYLUM/244. Transfer of refugee status.

244. Transfer of refugee status.

In certain circumstances it is possible to transfer refugee status between European countries¹. The United Kingdom² will normally, in accordance with the European Agreement on Transfer of Responsibility for Refugees³, accept responsibility for the claimant refugee and grant indefinite leave to remain if he has already gained lawful residence in the United Kingdom (that is to say that he is not applying from abroad or at port) and has been recognised as a refugee by one of the other countries which have ratified the Agreement⁴. A transfer of responsibility for the claimant is deemed to have occurred where one of the following conditions is met:

- 630 (1) the claimant has completed two years' continuous stay in the United Kingdom with the agreement of the authorities⁵;
- 631 (2) the claimant refugee has been allowed to remain in the United Kingdom on a permanent basis⁶;
- 632 (3) the claimant refugee has been permitted to stay in the United Kingdom beyond the validity of his travel document from the other state⁷.

If the United Kingdom accepts the transfer of responsibility for the claimant it must, in the interests of family reunification and for humanitarian reasons, facilitate the admission to the United Kingdom of the claimant's spouse and minor or dependent children⁸.

1 See the European Agreement on Transfer of Responsibility for Refugees (Strasbourg, 16 October 1980; ETS 107; Cmnd 8127). See also *Rahman v Secretary of State for the Home Department* [1989] Imm AR 325, IAT.

2 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

3 See note 1 supra.

4 See the European Agreement on Transfer of Responsibility for Refugees art 2(1).

5 Ibid art 2(1). Periods spent studying, training, receiving medical treatment, in prison or pending an immigration appeal which is ultimately dismissed do not count towards this two-year period: art 2(2). However, visits abroad for less than three consecutive months or six months in total are to be included in the two-year qualifying period: art 2(2).

6 See ibid art 2(1).

7 See ibid art 2(1). This condition is not met if: (1) the extension beyond validity was granted solely for the purposes of study, training or medical care; or (2) the person is still readmissible to the first state: arts 2(1), 4. The claimant will be readmissible if the United Kingdom requests this within six months of the expiry of the travel document; or within six months of the person coming to the notice of the authorities, so long as this is within two years of the document expiring: art 4.

8 Ibid art 6.

UPDATE**238-244 Claims for Asylum**

Education about the nature of the asylum process may now be provided to asylum-seekers through programmes of induction arranged by the Secretary of State: see further PARA 238A.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/245. The National Asylum Support Service.

(2) SUPPORT FOR ASYLUM-SEEKERS**245. The National Asylum Support Service.**

Before the implementation of the Immigration and Asylum Act 1999, support for asylum-seekers was provided by the Benefits Agency or local authorities. Under the Act, responsibility for support was largely transferred to the Secretary of State¹ who established the National Asylum Support Service (NASS) in April 2000².

NASS co-ordinates the arrangements for supporting asylum-seekers and dispersing them to different areas of the United Kingdom. NASS also funds a number of voluntary agencies that assist in implementing the support arrangements, in particular by providing 'one stop services' to advise asylum-seekers³.

NASS periodically issues policy bulletins covering such topics as racial harassment, dispersal and failure by asylum-seekers to travel to dispersal accommodation⁴.

1 As to the Secretary of State see para 2 ante.

2 See the Immigration and Asylum Act 1999 s 95: and para 246 ante. Some asylum-seekers remain entitled to support from the Benefits Agency as a result of transitional provisions and other exceptions (see para 249 post). Certain asylum-seekers retain support from local authorities under the National Assistance Act 1948 (see para 257 post). In addition, certain asylum-seekers are entitled to a similar form of asylum support as that provided by NASS but which is provided as 'interim' asylum support by local authorities (see para 247 post).

As to the National Asylum Support Service see also the Civil Service Year Book 2002 col 392.

3 I.e. under the Immigration and Asylum Act 1999 s 111: see para 256 post.

4 See eg NASS Policy Bulletins 17, 18, 31.

UPDATE**245-257 Support for Asylum-seekers**

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

245 The National Asylum Support Service

NOTES--See *R (on the application of Gezer) v Secretary of State for the Home Department* [2004] EWCA Civ 1730, [2005] HLR 219 (Secretary of State not obliged to inquire into safety of a dispersed family).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/246. Persons for whom support may be provided.

246. Persons for whom support may be provided.

The Secretary of State¹ may provide, or arrange for the provision of, support for asylum-seekers², or dependants³ of asylum-seekers, who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed⁴. A person is destitute if he does not have adequate accommodation⁵ or any means of obtaining it, whether or not his other essential living needs are met⁶, or he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs⁷.

1 For the purposes of the Immigration and Asylum Act 1999 Pt VI (ss 94-127) (as amended), the Secretary of State is a corporation sole: s 124(1). Any instrument in connection with the acquisition, management of or disposal of property, real or personal, heritable or moveable, by the Secretary of State under Pt VI (as amended) may be executed on his behalf by a person authorised by him for that purpose: s 124(2). Any instrument purporting to have been so executed on behalf of the Secretary of State is to be treated, until the contrary is proved, to have been so executed on his behalf: s 124(3). As to the Secretary of State see para 2 ante.

2 For the purposes of *ibid* Pt VI (as amended), 'asylum-seeker' means a person who is not under 18 and has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined: s 94(1). Unaccompanied minor asylum claimants may be supported by local authorities: see the Children Act 1989 s 17 (as amended), s 20; and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) para 851 et seq.

A claim for asylum does not need to be in any particular form: see *R v Uxbridge Magistrates' Court, ex p Adimi* [1999] 4 All ER 520 at 530 (the wording of previous Immigration Rules to the effect that a claim is made 'where it appears to the immigration officer as a result of information given that he may be eligible for asylum' (see the Statement of Changes in Immigration Rules (HC Paper (1989-90) no 251) para 75) was uncontroversially cited (contrast the requirement to submit an application for variation of leave for most non-asylum purposes: see the Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395) ('the Immigration Rules') para 32)).

A claim for asylum is determined at the end of such period beginning: (1) on the day on which the Secretary of State notifies the claimant of his decision on the claim; or (2) if the claimant has appealed against the decision of the Secretary of State, on the day on which the appeal is disposed of, as may be prescribed: Immigration and Asylum Act 1999 s 94(3). The period prescribed under s 94(3) is 28 days where:

- 102 (a) the Secretary of State notifies the claimant that his decision is to accept the asylum claim;
- 103 (b) the Secretary of State notifies the claimant that his decision is to reject the asylum claim but at the same time notifies him that he is giving him limited leave to enter or remain in the United Kingdom; or
- 104 (c) an appeal by the claimant against the Secretary of State's decision has been disposed of by being allowed;

and 21 days in any other case: Asylum Support Regulations 2000, SI 2000/704, reg 2(2), (2A), (3) (reg 2(2) substituted and reg 2(2A) added by SI 2002/472); Asylum Support (Interim Provisions) Regulations 1999, SI 1999/3056, reg 2(6), (7) (reg 2(6) substituted and reg 2(7) added by SI 2002/471). As to the meaning of 'United Kingdom' see para 5 note 1 ante. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante. A notice under the Immigration and Asylum Act 1999 s 94(3) must be given in writing and, if sent by the Secretary of State by first class post addressed to the asylum-seeker's representative or to the asylum-seeker's last known address, it is to be taken to have been received by the asylum-seeker on the second day after the day on which it was posted: s 94(8), (9). An appeal is disposed of when it is no longer pending for the purposes of the Immigration Acts or the Special Immigration Appeals Commission Act 1997: Immigration and Asylum Act 1999 s 94(4). For the meaning of 'the Immigration Acts' see para 83 ante. However, provided an asylum-seeker has not been granted leave to enter or remain, if his household includes a child who is under 18 and who is a dependant of his, he is to be treated as continuing to be an asylum-seeker while the child is under 18 and he and the child remain in the United Kingdom: s 94(5), (6).

The Secretary of State may also provide or arrange for provision of support for those temporarily admitted to the United Kingdom or released from detention on bail or otherwise: see s 4. The Secretary of State has a policy to consider providing support in circumstances where the person is no longer an 'asylum-seeker', has ceased to be supported by the National Asylum Support Service (NASS) or a local authority, appears to be destitute, has no other avenue of support and either: (i) it is not practicable for the person to travel to any other country by reason of a physical impediment; or (ii) the circumstances of the case are exceptional. The policy has been extended so that it is possible to obtain support in certain cases while there are proceedings outstanding for judicial review of the appellate authority decision. As to the National Asylum Support Service see para 245 ante.

3 'Dependant', in relation to an asylum-seeker or a supported person, means a person in the United Kingdom who:

- 105 (1) is his spouse;
- 106 (2) is a child of his, or of his spouse, who is, or was at the relevant time, under 18 and dependent on him;
- 107 (3) is a member of his or his spouse's close family and is, or was at the relevant time, under 18;
- 108 (4) had been living as part of his household for at least six of the 12 months before the relevant time, or since birth, and is, or was at the relevant time, under 18;
- 109 (5) is in need of care and attention from him or a member of his household by reason of a disability and would fall within head (3) or head (4) supra but for the fact that he is not, and was not at the relevant time, under 18;
- 110 (6) had been living with him as a member of an unmarried couple for at least two of the three years before the relevant time;
- 111 (7) is living as part of his household and was, immediately before 6 December 1999, receiving assistance from a local authority under the Children Act 1989 s 17 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) para 851 et seq);
- 112 (8) has made a claim for leave to enter or remain in the United Kingdom, or for variation of any such leave, which is being considered on the basis that he is dependent on the asylum-seeker;

and in relation to a supported person, or an applicant for asylum support, who is himself a dependant of an asylum-seeker, also includes the asylum-seeker if in the United Kingdom: Immigration and Asylum Act 1999 s 94(1); Asylum Support Regulations 2000, SI 2000/704, reg 2(1), (4). 'Relevant time', in relation to the relevant person, means the time when an application for asylum support for him was made, or, if he has joined a person who is already a supported person in the United Kingdom, the time when he joined that person in the United Kingdom: reg 2(6). Where a supported person or applicant for asylum support is himself a dependant of an asylum-seeker, a person who would otherwise be a dependant of the supported person, or of the applicant, is not such a dependant unless he is also a dependant of the asylum-seeker or is the asylum-seeker: reg 2(5). Where a person, by falling within a particular category in relation to an asylum-seeker or supported person, is a dependant of the asylum-seeker or supported person, that category is also a category of dependant and, accordingly, the person is a dependant of the asylum-seeker or supported person, unless he falls within head (1) or head (2) supra: reg 2(7), (8). As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante. The Secretary of State may inquire into, and decide, the age of any person: s 94(7).

4 Ibid s 95(1). The prescribed period is: (1) where the question as to whether a person or persons is or are destitute, or likely to become so, falls to be determined in relation to an application for asylum support and head (2) infra does not apply, 14 days beginning with the day on which that question falls to be determined; (2)

where that question falls to be determined in relation to a supported person, or in relation to persons including a supported person, 56 days beginning with the day on which that question falls to be determined: Asylum Support Regulations 2000, SI 2000/704, reg 7.

5 In determining whether a person's accommodation is adequate, the Secretary of State must consider: (1) whether it would be reasonable for the person to continue to occupy the accommodation given the general circumstances prevailing in relation to housing in the district of the local housing authority where the accommodation is located; (2) whether the accommodation is affordable for him; (3) whether the accommodation is provided under the Immigration and Asylum Act 1999 s 98 (see para 250 post), or otherwise on an emergency basis, only while the claim for asylum support is being determined; (4) whether the person can secure entry to the accommodation; (5) where the accommodation consists of a moveable structure, vehicle or vessel designed or adapted for human habitation, whether there is a place where the person is entitled or permitted both to place it and reside in it; (6) whether the accommodation is available for occupation by the person's dependants together with him; (7) whether it is probable that the person's continued occupation of the accommodation will lead to domestic violence against him or any of his dependants ('domestic violence' for these purposes means violence from a person who is or has been a close family member, or threats of violence from such a person which are likely to be carried out: Asylum Support Regulations 2000, SI 2000/704, reg 8(6)(a)); Immigration and Asylum Act 1999 s 95(5)(a); Asylum Support Regulations 2000, SI 2000/704, reg 8(1), (3), (4). But the Secretary of State may not consider such other matters as may be prescribed or any of the following matters: (a) the fact that the person concerned has no enforceable right to occupy the accommodation; (b) the fact that he shares the accommodation, or any part of it, with one or more other persons; (c) the fact that the accommodation is temporary; (d) the location of the accommodation: Immigration and Asylum Act 1999 s 95(5)(b), (6). The matters mentioned in heads (1), (4)-(7) supra are not so prescribed for the purposes of a case where the person indicates to the Secretary of State that he wishes to remain in the accommodation: Asylum Support Regulations 2000, SI 2000/704, reg 8(2). In determining the affordability of the accommodation under head (2) supra the Secretary of State must have regard to: (i) any income, or any assets mentioned in reg 6(5) (see para 247 note 19 post) (whether held in the United Kingdom or elsewhere), which is or are available to him or any dependant of his otherwise than by way of asylum support or temporary support under the Immigration and Asylum Act 1999 s 98 (see para 250 post), or might reasonably be expected to be so available; (ii) the costs in respect of the accommodation; and (iii) the person's other reasonable living expenses: Asylum Support Regulations 2000, SI 2000/704, reg 8(5).

6 In determining whether a person's other essential living needs are met, the Secretary of State must have regard to such other matters as may be prescribed, but may not have regard to that person's personal preference as to clothing (but this does not prevent the Secretary of State from taking into account his individual circumstances as regards clothing): Immigration and Asylum Act 1999 s 95(7); Asylum Support Regulations 2000, SI 2000/704, reg 9(1), (2). None of the following items and expenses are to be treated as being an essential living need of a person: (1) the cost of faxes; (2) computers and the cost of computer facilities; (3) the cost of photocopying; (4) travel expenses; (5) toys and other recreational items; (6) entertainment expenses: Immigration and Asylum Act 1999 s 95(8); Asylum Support Regulations 2000, SI 2000/704, reg 9(3), (4). However, the expense of an initial journey from a place in the United Kingdom to accommodation provided by way of asylum support or (where accommodation is not so provided) to an address in the United Kingdom which has been notified to the Secretary of State as the address where the person intends to live is an exception to head (4) supra: reg 9(5). The fact that the items listed in heads (1)-(6) supra are excluded is not to be taken to affect the question whether any item or expense so excluded is, or is not, an essential living need: reg 9(6). Regulation 9(1), (2) also applies to temporary support: see reg 9(7).

7 Immigration and Asylum Act 1999 s 95(3). If a person has dependants, the definition of destitute is to be read as if the references to him were references to him and his dependants taken together: s 95(4).

UPDATE

246 Persons for whom support may be provided

TEXT AND NOTES--The following classes of persons are not eligible for support or assistance under the enactments specified in Nationality, Immigration and Asylum Act 2002 s 54, Sch 3 para 1: (1) a person who has refugee status abroad, or is the dependant of a person who is in the United Kingdom and who has refugee status abroad; (2) a person who has the nationality of an EEA state other than the United Kingdom, or is the dependant of a person who has the nationality of an EEA state other than the United Kingdom; (3) a person who was, but is no longer, an asylum-seeker, and who has failed to co-operate with removal directions issued in respect of him, or a dependant of such a person; (4) a person who is in the United Kingdom in breach of the immigration laws within the meaning of British Nationality Act 1981 s 50A (see PARA

26), and who is not an asylum-seeker; and (5) a person who is a failed asylum-seeker with a family: see Sch 3 paras 1(1), 4-7A (Sch 3 para 7 amended by Borders, Citizenship and Immigration Act 2009 s 48(6)). The enactments specified in Sch 3 para 1(1) (as amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 229) are the National Assistance Act 1948 ss 21, 29, the Health Services and Public Health Act 1968 s 45, the National Health Service Act 2006 s 254, Sch 20, or the National Health Service (Wales) Act 2006 s 192, Sch 15, the Children Act 1989 ss 17, 23C, 24A or 24B, the Housing Act 1996 ss 188(3), 204(4), the Local Government Act 2000 s 2, a provision of the Immigration and Asylum Act 1999, or a provision of the Nationality, Immigration and Asylum Act 2002. For the purposes of head (1), a person has refugee status abroad if he does not have the nationality of an EEA state, and the government of an EEA state other than the United Kingdom has determined that he is entitled to protection as a refugee under the Refugee Convention: 2002 Act Sch 3 para 4(2). The Secretary of State may make regulations providing for arrangements to be made enabling persons who fall within heads (1), (2) to leave the United Kingdom and for temporary accommodation to be provided pending the implementation of such arrangements: see Sch 3 paras 8, 9. In exercise of this power, the Secretary of State has made the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002, SI 2002/3078 (amended by SI 2005/2114). An appeal may not be brought under Sch 3 against a decision, except made under para 7A, that a person is not qualified to receive support, or on the grounds of the application of a provision of Sch 3 to stop providing support to a person: Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 9(3). Where there is an appeal under the 1999 Act s 103 against a decision made under Sch 3 para 7A, the adjudicator may in particular annul a certificate of the Secretary of State, and require the Secretary of State to reconsider the matters certified: 2004 Act s 9(4).

As to exceptions to ineligibility for support under these provisions see the 2002 Act Sch 3 paras 2, 3 and *R (on the application of M) v Islington LBC* [2004] EWCA Civ 235, [2005] 1 WLR 884; and as to offences see Sch 3 para 13. For the purposes of Sch 3, a dependant of a person includes a person's spouse, and 'spouse' means a person who is lawfully married to another, notwithstanding that he may be excluded from the definition of spouse for other purposes: *R (on the application of K) v Lambeth LBC* [2003] EWCA Civ 1150, [2003] 3 FCR 222. See also *R (on the application of Grant) v Lambeth LBC* [2004] EWCA Civ 1711, [2005] 1 WLR 1781 (local authority entitled to provide air fare for applicant and her children to be repatriated); *R (on the application of AW) v Croydon LBC*; *R (on the application of A, D and Y) v Hackney LBC* [2007] EWCA Civ 266, [2007] LGR 417; *R (on the application of B) v Southwark LBC* [2006] EWHC 2254 (Admin), [2006] All ER (D) 83 (Sep).

When the Secretary of State is providing or arranging for the provision of accommodation for an asylum seeker and his family members under the 1999 Act s 95, where those family members confirm to the Secretary of State that they agree to being accommodated together, he must have regard to family unity and ensure, in so far as it is reasonably practicable to do so, that family members are accommodated together: Asylum Seekers (Reception Conditions) Regulations 2005, SI 2005/7, reg 3(1), (2). Regulation 3 does not apply in respect of a child when the Secretary of State is providing or arranging for the provision of accommodation for that child under the 1999 Act s 122 (see PARAS 257-300): SI 2005/7 reg 3(3). When the Secretary of State is providing support or considering whether to provide support under the 1999 Act s 95 to an asylum seeker or his family member who is a vulnerable person, he must take into account the special needs of that asylum seeker or his family member: see SI 2005/7 reg 4. If an asylum seeker or his family member applies for support under the 1999 Act s 95 and the Secretary of State thinks that the asylum seeker or his family member is eligible for support under s 95, he must offer the provision of support to the

asylum seeker or his family member: SI 2005/7 reg 5(1). So as to protect an unaccompanied minor's best interests, the Secretary of State must endeavour to trace the members of the minor's family as soon as possible after the minor makes his claim for asylum: reg 6.

NOTE 2--1999 Act s 4 now s 4(1): Nationality, Immigration and Asylum Act 2002 s 49(2). Provision has now been made to enable the Secretary of State to provide, or arrange for the provision of, facilities for the accommodation of a person (or a dependant of that person) if he was, but is no longer, an asylum-seeker, and his claim for asylum was rejected: see the 1999 Act s 4(2)-(4) (s 4(2)-(4) added by the 2002 Act s 49(1)). The Secretary of State may make regulations specifying criteria to be used in determining whether or not to provide accommodation, continue to provide accommodation, or arrange for the provision of accommodation for a person under the 1999 Act s 4: s 4(5) (added by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 10(1)). Such regulations may (1) provide for the continuation of the provision of accommodation for a person to be conditional upon his performance of or participation in community activities in accordance with arrangements made by the Secretary of State; (2) provide for the continuation of the provision of accommodation to be subject to other conditions; and (3) provide for the provision of accommodation, or the continuation of the provision of accommodation, to be a matter for the Secretary of State's discretion to a specified extent or in a specified class of case: 1999 Act s 4(6) (added by the 2004 Act s 10(1)). 'Community activities means activities that appear to the Secretary of State to be beneficial to the public or a section of public: 1999 Act s 4(7)(a) (see s 4(7)(b)-(9)) (added by the 2004 Act s 10(1)). Where an applicant makes a fresh claim for asylum the Home Office must ensure that the National Asylum Support Service and other agencies act together to avoid any injustice to the applicant: *R (on the application of Nigatu) v Secretary of State for the Home Department* [2004] EWHC 1806 (Admin), [2004] ACD 351.

The Secretary of State may also make regulations permitting a person who is provided with accommodation under the 1999 Act s 4 to be supplied also with services or facilities of a specified kind: 1999 Act s 4(10) (s 4(10), (11) added by the Immigration, Asylum and Nationality Act 2006 s 43(7)). Such regulations may (a) permit a person to be supplied with a voucher which may be exchanged for goods or services; (b) not permit a person to be supplied with money; (c) restrict the extent or value of services or facilities to be provided; and (d) confer a discretion: 1999 Act s 4(11) (as so added).

NOTE 3--SI 2000/704 reg 2(1), (4) amended: SI 2005/2114.

NOTES 5-7--The adequacy of accommodation is to be tested by reference to the needs of the person to whom the duty is owed: *R (on the application of A) v National Asylum Support Service* [2003] EWCA Civ 1473, [2004] 1 WLR 752 (disability of dependant relevant to adequacy).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/247. Application for support.

247. Application for support.

An asylum-seeker¹, or a dependant² of an asylum-seeker, may apply to the Secretary of State³ for: (1) asylum support for the applicant alone; or (2) asylum support for the applicant and one or more of his dependants⁴.

A person is excluded from applying under head (1) above if at the time when the application is determined he is a person to whom interim asylum support applies⁵, or he is a person to whom social security benefits apply⁶, or he has not made a claim for leave to enter or remain in the United Kingdom⁷, or for variation of any such leave, which is being considered on the basis that he is an asylum-seeker or he is the dependant of an asylum-seeker⁸. A person is excluded from applying, or being included in an application made by a person other than himself, under head (2) above if he and each of the persons to whom the application relates falls within any of the foregoing categories that prevent a person from applying under head (1) above⁹.

Asylum-seekers for whom interim support is available may apply to a local authority for interim asylum support, rather than for asylum support¹⁰. Certain categories of asylum-seekers are eligible for social security benefits rather than for asylum support¹¹.

Where an application is for asylum support for the applicant and one or more dependants, the Secretary of State must decide whether the applicant and all those dependants, taken together, are destitute or likely to become destitute within the prescribed period¹². Where a person is a supported person¹³, and the question falls to be determined whether asylum support should in future be provided for him and one or more other persons who are his dependants and are persons for whom asylum support is also being provided when that question falls to be determined, or persons for whom the Secretary of State is then considering whether asylum support should be provided, the Secretary of State must decide whether the supported person and all those dependants, taken together, are destitute or likely to become destitute within the prescribed period¹⁴. Support may be provided subject to conditions, which must be set out in writing, and a copy of which must be given to the supported person¹⁵.

Where it falls to the Secretary of State to determine whether:

- 633 (a) a person applying for asylum support, or such an applicant and any dependants of his; or
- 634 (b) a supported person, or such a person and any dependants of his,

is or are destitute or likely to become so within the period prescribed, the Secretary of State must ignore any asylum support and any temporary support¹⁶ which the principal¹⁷ or any of his dependants are provided with or, (where the question is whether destitution is likely within a particular period) might be provided with, within that period¹⁸. The Secretary of State must take into account: (i) any other income which the principal, or any dependant, has or might reasonably be expected to have in that period; (ii) any other support which is available to the principal or any dependant, or might reasonably be expected to be so available in that period; and (iii) certain assets¹⁹ (whether held in the United Kingdom or elsewhere) which are available to the principal or any dependant otherwise than by way of asylum support or temporary support, or which might reasonably be expected to be so available in that period²⁰.

1 For the meaning of 'asylum-seeker' see para 246 note 2 ante.

2 For the meaning of 'dependent' see para 246 note 3 ante.

3 As to the Secretary of State see para 2 ante. See also para 246 note 1 ante.

4 Asylum Support Regulations 2000, SI 2000/704, reg 3(1), (2). The application may not be entertained by the Secretary of State unless it is made by completing in full and in English the form for the time being issued by the Secretary of State for the purpose: reg 3(3), (4). For the form to be used see reg 3(3), Schedule. Regulation 3(3), (4) does not apply where a person is already a supported person and asylum support is sought for a dependant of his for whom such support is not already provided (for which case provision is made by reg 15 (see para 248 post): reg 3(6). The Secretary of State may make further inquiries of the applicant about any matter connected with the application: reg 3(5). As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

5 Interim support is that which the Secretary of State requires local authorities to provide for certain classes of destitute asylum-seeker who are therefore excluded from asylum support provided directly by the Secretary of State: see the Immigration and Asylum Act 1999 s 95(13), Sch 9; and the Asylum Support (Interim Provisions) Regulations 1999, SI 1999/3056 (amended by SI 2002/471). Local authorities are required to provide interim support during the 'interim period' which began on 6 December 1999 and ends on 5 April 2004: Immigration and Asylum Act 1999 Sch 9 paras 1(1), 15; Asylum Support (Interim Provisions) Regulations 1999, SI 1999/3056, regs 1(1), 2(5) (amended by SI 2002/471). 'Interim support' applies to a person if: (1) at the time when the application is determined, he is a person to whom, under the Asylum Support (Interim Provisions) Regulations 1999, SI 1999/3056 (as amended), support under reg 3 must be provided by a local authority; (2) head (1) supra does not apply, but would do so if the person had been determined by the local authority concerned to be an eligible person; or (3) head (1) supra does not apply, but would do so but for the fact that the person's support under the Asylum Support (Interim Provisions) Regulations 1999, SI 1999/3056 (as amended) was refused, or suspended or discontinued: Asylum Support Regulations 2000, SI 2000/704, reg 4(5). The Secretary of State may, by directions given to a local authority to whom the Immigration and Asylum Act 1999 Sch 9 applies, require the authority to treat the interim period fixed for the purposes of that Schedule as coming to an end: (a) for specified purposes; (b) in relation to a specified area or locality; or (c) in relation to persons of a specified description, on such earlier day as may be specified: Sch 15 para 14(1). A number of directions have been made, but such directions are not made by statutory instrument and are, therefore, not covered in this work.

6 A person is a person to whom social security benefits apply if he is a person who is not excluded from entitlement to income-based jobseeker's allowance under the Jobseekers Act 1995 or income support, housing benefit or council tax benefit under the Social Security Contributions and Benefits Act 1992: see the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, SI 2000/636, regs 2, 12; Asylum Support Regulations 2000, SI 2000/704, reg 4(6). As to income support see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 176 et seq; as to housing benefit see HOUSING vol 22 (2006 Reissue) para 140 et seq; as to council tax benefit see RATING AND COUNCIL TAX vol 39(1B) (Reissue) para 371 et seq. As to asylum-seekers' eligibility for social security payments see para 249 post.

7 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

8 Asylum Support Regulations 2000, SI 2000/704, reg 4(2), (4).

9 See *ibid* reg 4(3). A person is not excluded from applying for asylum support if, when asylum support is sought for him, he is a dependant of a person who is already a supported person: reg 4(7).

10 See the Asylum Support (Interim Provisions) Regulations 1999, SI 1999/3056 (as amended). A local authority is entitled to provide support at a rate designedly less than that payable by the Secretary of State, provided it appeared to meet the claimants' essential living needs: *R (on the application of Satu) v Hackney London Borough Council* [2002] EWHC 952 (Admin).

11 See para 249 post.

12 Asylum Support Regulations 2000, SI 2000/704, reg 5(1). As to whether a person is destitute see para 246 ante. For the prescribed period see para 246 note 4 ante.

13 'Supported person' means either an asylum-seeker or a dependant of an asylum-seeker who has applied for support and for whom support is provided under the Immigration and Asylum Act 1999 s 95 (see para 246 ante): s 94(1). References to support provided under s 95 include references to support which is provided under arrangements made by the Secretary of State under s 95: s 94(2).

14 Asylum Support Regulations 2000, SI 2000/704, reg 5(2). Where a group is composed of persons to whom interim support or social security benefits apply (see the text and notes 10-11 supra), the applicants are expected to exhaust other forms of support before applying to the Secretary of State: see NASS Policy Bulletin No 11: *Mixed Households*.

15 Immigration and Asylum Act 1999 s 95(9)-(11).

16 *Ie* under *ibid* s 98: see para 250 post.

17 'The principal' means the applicant for asylum support or the supported person, as appropriate: Asylum Support Regulations 2000, SI 2000/704, reg 6(2).

18 *Ibid* reg 6(1), (3).

19 The assets are cash, savings, investments, land, cars or other vehicles, and goods held for the purpose of a trade or other business: *ibid* reg 6(5). The Secretary of State must ignore any other assets: reg 6(6). Where it appears to the Secretary of State at any time (the relevant time) that a supported person had, at the time when

he applied for asylum support, assets of any kind in the United Kingdom or elsewhere which were not capable of being realised, but that those assets have subsequently become, and remain, capable of being realised, he may recover from that person a sum not exceeding the recoverable sum: reg 17(1), (2). The recoverable sum is a sum equal to whichever is the less of the monetary value of all the asylum support provided to the person up to the relevant time, and the monetary value of the assets concerned: reg 17(3). The recoverable sum is treated as reduced by any amount which the Secretary of State has already recovered from the person concerned (whether by deduction or otherwise) with regard to the assets concerned: reg 17(5). A recoverable amount may be recovered by deduction from asylum support: see reg 17(4).

20 Ibid reg 6(4).

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

247 Application for support

NOTES--As to the refusal of an application for support where a late claim is made for asylum see PARA 247A.

NOTE 4--SI 2000/704 reg 3(3) amended, Schedule revoked: SI 2007/863. In addition, the application may not be made where the Secretary of State is not satisfied that the information provided is complete or accurate or that the applicant is co-operating with inquiries made under SI 2000/704 reg 3(5): reg 3(4) (substituted by SI 2002/3110). SI 2000/704 Schedule amended: SI 2002/3110, SI 2004/1313, SI 2006/635. Where the Secretary of State makes further inquiries under SI 2000/704 reg 3(5) the applicant must reply to those inquiries within five working days of his receipt of them: reg 3(5A) (reg 3(5A)-(5C), (7) added by SI 2005/11). The Secretary of State is entitled to conclude that the applicant is not co-operating with his inquiries under SI 2000/704 reg 3(5) if he fails, without reasonable excuse, to reply within the period prescribed by reg 3(5A): reg 3(5B). In cases where the Secretary of State may not entertain an application for asylum support he must also discontinue providing support under the Immigration and Asylum Act 1999 s 98: SI 2000/704 reg 3(5C). For the purposes of reg 3, working day means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 s 1 in the locality in which the applicant is living: SI 2000/704 reg 3(7).

NOTE 5--1999 Act Sch 9 amended: Nationality, Immigration and Asylum Act 2002 s 50(2). Interim period now ends on 3 April 2006: SI 1999/3056 reg 2(5) (amended by SI 2004/566, SI 2005/595). SI 1999/3056 further amended: SI 2005/2114.

NOTE 6--SI 2000/636 reg 2 amended: SI 2003/2274, SI 2008/1554, SI 2008/3108. SI 2000/636 reg 12 amended: Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 12(3), SI 2008/1554.

NOTE 15--A condition imposed under the 1999 Act s 95(9) may, in particular, relate to (1) any matter relating to the use of the support provided; or (2) compliance with a

restriction imposed under the 1971 Act Sch 2 para 21 (see PARA 212), or Sch 3 paras 2, 5 (see PARA 166): 1999 Act s 95(9A) (added by Nationality, Immigration and Asylum Act 2002 s 50(1)).

NOTE 19--The Secretary of State may require a supported person to refund asylum support if it transpires that at any time during which asylum support was being provided for him he was not destitute: SI 2000/704 reg 17A(1) (reg 17A added by SI 2005/11). If a supported person has dependants, the Secretary of State may require him to refund asylum support if it transpires that at any time during which asylum support was being provided for the supported person and his dependants they were not destitute: reg 17A(2). The refund required must not exceed the monetary value of all the asylum support provided to the supported person or to the supported person and his dependants for the relevant period: reg 17A(3). The relevant period is the time during which asylum support was provided for the supported person or the supported person and his dependants and during which he or they were not destitute: reg 17A(4). If not paid within a reasonable period, the refund required may be recovered from the supported person as if it were a debt due to the Secretary of State: reg 17A(5).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/247A. Late claim for asylum: refusal of support.

247A. Late claim for asylum: refusal of support.

The Secretary of State may not provide or arrange for the provision of support to a person under certain provisions¹ if the person makes a claim for asylum² which is recorded by the Secretary of State, and the Secretary of State is not satisfied that the claim was made as soon as reasonably practicable after the person's arrival in the United Kingdom³. Similarly, an authority may not provide or arrange for the provision of support to a person under certain provisions⁴ if the person has made a claim for asylum and the Secretary of State is not so satisfied⁵.

An authority which proposes to provide or arrange for the provision of support to a person⁶ (1) must inform the Secretary of State if it believes that the person has made a claim for asylum; (2) must act in accordance with any guidance issued by the Secretary of State to determine whether the provisions relating to late claims apply⁷; and (3) must not be prohibited from providing or arranging for the provision of support if the authority has complied with heads (1) and (2) and concluded that the provisions relating to late claims do not apply⁸.

A decision of the Secretary of State that the above provisions prevent him from providing or arranging for the provision of support to a person is not a decision that the person does not qualify for support for the purposes of an appeal⁹. Nor do the above provisions prevent a person's compliance with a residence restriction imposed for the purposes of a programme of induction¹⁰.

1 I.e. the provisions mentioned in the Nationality, Immigration and Asylum Act 2002 s 55(2). The provisions so mentioned are (1) the Immigration and Asylum Act 1999 ss 4, 95 (see PARA 246) and s 98 (see PARA 250); and (2) the 2002 Act ss 17, 24: s 55(2).

2 'Claim for asylum' has the same meaning as in *ibid* s 18: s 55(9).

3 *Ibid* s 55(1). Section 55 must not prevent (1) the exercise of a power by the Secretary of State to the extent necessary for the purpose of avoiding a breach of a person's Convention rights (within the meaning of the Human Rights Act 1998); (2) the provision of support under the 1999 Act s 95, or the 2002 Act s 17 in accordance with the 1999 Act s 122 (see PARA 257); or (3) the provision of support under the 1999 Act s 98 or

the 2002 Act s 24 (provisional support) to a person under the age of 18 and the household of which he forms part: s 55(5). In determining whether an asylum seeker has claimed asylum 'as soon as reasonably practicable', both his practical opportunity of claiming asylum and his personal circumstances must be taken into account: *R (on the application of Q) v Secretary of State for the Home Department* [2003] EWCA 364, [2003] All ER (D) 265 (Mar). See *R (on the application of T) v Secretary of State for the Home Department* [2003] EWCA Civ 1285, [2003] All ER (D) 149 (Sep) (see further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 124 NOTE 3). Destitution resulting from the denial of assistance to asylum-seekers can involve a breach of an individual's rights under the European Convention on Human Rights art 3: *R (on the application of Limbuela) v Secretary of State for the Home Department*; *R (on the application of Tesema) v Secretary of State for the Home Department*; *R (on the application of Adam) v Secretary of State for the Home Department* [2005] UKHL 66, [2006] 1 AC 396.

4 le the provisions mentioned in the 2002 Act s 55(4). The provisions so mentioned are (1) the Housing Act 1996 ss 188(3) (see HOUSING vol 22 (2006 Reissue) PARA 286), 204(4) (see HOUSING vol 22 (2006 Reissue) PARA 295); and (2) the Local Government Act 2000 s 2 (see LOCAL GOVERNMENT vol 69 (2009) PARA 463): 2002 Act s 55(4).

5 2002 Act s 55(3). The Secretary of State may by order add, remove or amend an entry in the list in s 55(4), and may provide for s 55(3) not to have effect in specified cases or circumstances: s 55(7). An order under s 55(7) may include transitional, consequential or incidental provision, must be made by statutory instrument, and may not be made unless a draft has been laid before and approved by resolution of each House of Parliament: s 55(8).

6 le under a provision mentioned in *ibid* s 55(4): see NOTE 4.

7 le whether *ibid* s 55(3) applies.

8 *Ibid* s 55(6).

9 *Ibid* s 55(10). The appeal referred to is one made under the 1999 Act s 103: see PARA 253.

10 2002 Act s 55(11). Such residence restrictions may be imposed in reliance on s 70.

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

Halsbury's Laws of England/British Nationality, Immigration and Asylum (Volume 4(2) (2002 Reissue))/4. Asylum/(2) Support for Asylum-seekers/248. Provision of support.

248. Provision of support.

Support may be provided to asylum-seekers¹ or their dependants²:

635 (1) by providing accommodation appearing to the Secretary of State³ to be adequate for the needs of the supported person⁴ and his dependants, if any⁵;

- 636 (2) by providing what appear to the Secretary of State to be essential living needs⁶ of the supported person and his dependants, if any⁷;
- 637 (3) to enable the supported person, if he is the asylum-seeker, to meet what appear to the Secretary of State to be expenses (other than legal expenses or other expenses of a description prescribed by regulations) incurred in connection with his claim for asylum⁸;
- 638 (4) to enable the asylum-seeker and his dependants to attend bail proceedings in connection with his detention under any provision of the Immigration Acts⁹; or
- 639 (5) to enable the asylum-seeker and his dependants to attend bail proceedings in connection with the detention of a dependant of his under any provision of those Acts¹⁰.

If the Secretary of State considers that the circumstances of a particular case are exceptional, he may provide support in such other ways as he considers necessary to enable the supported person and any dependants to be supported¹¹. Where it falls to the Secretary of State to decide the level or kind of asylum support to be provided for a person applying for asylum support, or such an applicant and any dependants, or a supported person, or such a person and any dependants, the Secretary of State must take into account any income which the principal¹² or any dependant has or might reasonably be expected to have, support which is or might reasonably be expected to be available to the principal or any dependant, and any assets¹³, whether held in the United Kingdom or elsewhere, which are or might reasonably be expected to be available to the principal or any dependant, otherwise than by way of asylum support¹⁴. Support may be provided subject to conditions, which must be set out in writing, and a copy of which must be given to the supported person¹⁵.

Where the Secretary of State has decided that asylum support should be provided in respect of the essential living needs of a person (or couple), as a general rule, such support may be expected to be provided weekly in the form of vouchers redeemable for cash¹⁶.

When exercising his power to provide accommodation¹⁷, the Secretary of State must have regard to: (a) the fact that the accommodation is to be temporary pending determination of the asylum-seeker's claim¹⁸; (b) the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation¹⁹; and (c) such other matters as may be prescribed by regulations²⁰. However, he may not have regard to any preference that the supported person or any dependants may have as to the locality in which the accommodation is to be provided²¹, or that person's personal preference as to the nature of the accommodation to be provided²², or his personal preference as to the nature and standard of fixtures and fittings²³. However, the Secretary of State may take into account a person's individual circumstances as they relate to his accommodation needs²⁴. The general policy of the Secretary of State is to disperse asylum-seekers to accommodation outside London and the South East provided that, in any individual case, dispersal would not constitute an interference with the asylum-seeker's human rights²⁵.

When exercising his power to provide essential living needs²⁶, the Secretary of State must have regard to such matters as may be prescribed²⁷, but may not have regard to such other matters as may be prescribed²⁸. In determining how to provide or arrange for the provision of support the Secretary of State may disregard any preference which the supported person or any dependants may have as to the way in which the support is to be given²⁹. The Secretary of State may require any person conveying postal packets to supply redirection information to him for any purpose relating to the provision of support to asylum-seekers³⁰.

If a relevant change of circumstances³¹ occurs, the supported person concerned or a dependant of his must, without delay, notify the Secretary of State of that change of circumstances³². If, on being notified of a change of circumstances, the Secretary of State considers that the change may result in a decision that asylum support should be provided for a person for whom it was not provided before, or as a result of which asylum support should no longer be provided for a

person, or which may otherwise affect the asylum support which should be provided for a person, he may make further inquiries of the supported person or dependant who gave the notification³³.

1 For the meaning of 'asylum-seeker' see para 246 note 2 ante.

2 le under the Immigration and Asylum Act 1999 s 95: see paras 246-247 ante. For the meaning of 'dependant' see para 246 note 3 ante.

3 As to the Secretary of State see para 2 ante. See also para 246 note 1 ante.

4 For the meaning of 'supported person' see para 247 note 13 ante.

5 Immigration and Asylum Act 1999 s 96(1)(a).

6 As to essential living needs see para 246 note 6 ante.

7 Immigration and Asylum Act 1999 s 96(1)(b).

8 Ibid s 96(1)(c). At the date at which this volume states the law no such regulations had been made. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

9 Ibid s 96(1)(d). For the meaning of 'the Immigration Acts' see para 83 ante. As to bail proceedings see para 211 et seq ante.

10 Immigration and Asylum Act 1999 s 96(1)(e).

11 Ibid s 96(2). A real risk that an HIV positive mother will breast feed her child, exposing the child to the risk of infection, is capable of being an exceptional circumstance: *R (on the application of T and S) v Secretary of State for Health and the Secretary of State for the Home Department* [2002] EWHC 1887 (Admin).

12 'Principal' means the applicant for asylum support or the supported person, as appropriate: Asylum Support Regulations 2000, SI 2000/704, reg 12(2).

13 As to the meaning of 'assets' see para 247 note 19 ante.

14 Asylum Support Regulations 2000, SI 2000/704, reg 12(1), (3). Further, the Secretary of State may set the asylum support for the person at a level which does not reflect the income, support or assets, and require from that person payments by way of contributions towards the cost of the provision for him of asylum support: reg 16(1)-(3). Prompt payment of such contributions may be made a condition subject to which asylum support for that person is provided: reg 16(4). As to the relevance of social security payments to family members see note 16 infra.

15 See the Immigration and Asylum Act 1999 s 95(9)-(11). The Secretary of State may take into account the extent to which any relevant condition has been complied with when deciding whether to provide, or to continue to provide, asylum support for any person or persons, or the level or kind of support to be provided for any person or persons: Asylum Support Regulations 2000, SI 2000/704, reg 19(1). A relevant condition is a condition subject to which asylum support for that person or any of those persons is being, or has previously been, provided: reg 19(2).

16 Asylum Support Regulations 2000, SI 2000/704, reg 10(1)-(3) (reg 10(2) substituted by SI 2002/472). Before 8 April 2002, unless the circumstances of a particular case were exceptional, support provided by the Secretary of State could not be wholly or mainly by way of payments made, by whatever means, to the supported person or to his dependants, if any: see the Immigration and Asylum Act 1999 s 96(3) (repealed by the Asylum Support (Repeal) Order 2002, SI 2002/782, made under the Immigration and Asylum Act 1999 s 96(5)). As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante. No order is to be made under s 96(5) unless a draft of the order has been laid before Parliament and approved by a resolution of each House (s 166(4)(e)), and accordingly any statutory instrument made under s 96(5) is not subject to annulment by a resolution of either House of Parliament (s 166(6)(a)).

The total redemption value for any week of the vouchers is specified in the Asylum Support Regulations 2000, SI 2000/704, reg 10(2), Table (as so substituted). Where the Secretary of State has decided that accommodation should be provided for a person (or couple) by way of asylum support, and the accommodation is provided in a form which also meets other essential living needs (such as bed and breakfast, or half or full board), the amounts shown in the Table are treated as reduced accordingly: reg 10(5). The Table is a guideline and starting point for assessing the essential living needs of an applicant, which depend on his individual

circumstances: see *R (on the application of the Secretary of State for the Home Department (NASS)) v Asylum Support Adjudicators and Berkadle and Perera* [2001] EWHC 881 (Admin).

If an application for additional support is made to the Secretary of State by or on behalf of a person for whom asylum support has been provided for the whole of the qualifying period ('the eligible person'), then at the end of each qualifying period, the Secretary of State may as a general rule be expected to provide, or arrange for the provision of, additional support for an eligible person (in respect of his essential living needs) in the form of a single issue of vouchers redeemable for cash whose total redemption value equals £50 or a single cash payment of £50: reg 11(1), (2), (5) (reg 11(1) amended by SI 2002/472). A 'qualifying period' is the period of six months beginning with the day on which asylum support was first provided for the person, and each period of six months beginning with a re-start day; and a 're-start day' is the day after the day on which a qualifying period ends: Asylum Support Regulations 2000, SI 2000/704, reg 11(3), (4). Where a person is, in the opinion of the Secretary of State, responsible without reasonable excuse for a delay in the determination of his claim for asylum, the Secretary of State may treat any qualifying period as extended by the period of delay: reg 11(6).

Education, including English language lessons, and sporting or other developmental activities may be provided or made available by way of asylum support to persons who are otherwise receiving such support, but may be so provided only for the purpose of maintaining good order among such persons: reg 14. Disability need not be taken into account in assessing essential living needs, as this is a matter for the local authority's assessment of needs: *R (on the application of Oujii) v Secretary of State for the Home Department* [2002] EWHC 1839 (Admin). See also para 257 post.

17 Ie his power under the Immigration and Asylum Act 1999 s 95: see para 246 ante.

18 Ibid s 97(1)(a). The Secretary of State may by order repeal all or any of s 97(1)(a), (b), (2)(a): s 97(3). At the date at which this volume states the law no such orders had been made. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante. No order is to be made under s 97(3) unless a draft of it has been laid before Parliament and approved by a resolution of each House (s 166(4)(f)), and accordingly any statutory instrument made under s 97(3) is not subject to annulment by a resolution of either House of Parliament (s 166(6)(a)).

19 Ibid s 97(1)(b). See note 18 supra.

20 Ibid s 97(1)(c). At the date at which this volume states the law no such regulations had been made. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

21 Ibid s 97(2)(a). See note 18 supra.

22 Ibid s 97(2)(b); Asylum Support Regulations 2000, SI 2000/704, reg 13(1), (2)(a).

23 Ibid reg 13(1), (2)(b).

24 Ibid reg 13(2).

25 The Secretary of State will consider whether, in the light of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), any of the following matters preclude dispersal: the existence of family ties (ie the right to a private and family life under art 8); whether the asylum-seeker has children who have been attending school or pre-school classes and who have been resident in London for 12 months or more (ie the right not to be denied an education under the First Protocol art 2), whether the asylum-seeker will be able to worship and pursue their faith in the dispersal area (ie the right to freedom of conscience and religion under art 9): see NASS Policy Bulletin 31: *Dispersal Guidelines*.

26 Ie his power under the Immigration and Asylum Act 1999 s 95: see para 246 ante.

27 Ibid s 97(4)(a). See notes 14-15 supra. In addition, when exercising this power to provide essential living needs, the Secretary of State may limit the overall amount of the expenditure which he incurs in connection with a particular supported person to such portion of the income support applicable amount provided under the Social Security Contributions and Benefits Act 1992 s 124 (as amended) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 183), or such portion of any components of that amount, as he considers appropriate having regard to the temporary nature of the support that he is providing: Immigration and Asylum Act 1999 s 97(5). For these purposes, any support of a kind falling within s 96(1)(c) (see head (3) in the text) is treated as if it were the provision of essential living needs: s 97(6). As to the relevance of social security payments to asylum-seekers see note 16 supra.

28 Ibid s 97(4)(b). At the date at which this volume states the law no such matters had been prescribed.

29 Ibid s 97(7).

30 See ibid s 127(1)(c).

31 A relevant change of circumstances occurs where a supported person or a dependant of his: (1) is joined in the United Kingdom by a dependant or, as the case may be, another dependant, of the supported person; (2) receives or gains access to any money, or other asset (see para 247 note 19 ante), that has not previously been declared to the Secretary of State; (3) becomes employed; (4) becomes unemployed; (5) changes his name; (6) gets married; (7) starts living with a person as if married to that person; (8) gets divorced; (9) separates from a spouse, or from a person with whom he has been living as if married to that person; (10) becomes pregnant; (11) has a child; (12) leaves school; (13) starts to share his accommodation with another person; (14) moves to a different address, or otherwise leaves his accommodation; (15) goes into hospital; (16) goes to prison or is otherwise held in custody; (17) leaves the United Kingdom; or (18) dies: Asylum Support Regulations 2000, SI 2000/704, reg 15(2).

32 Ibid reg 15(1).

33 Ibid reg 15(3). The Secretary of State may, in particular, require that person to provide him with such information as he considers necessary to determine whether, and if so, what, asylum support should be provided for any person: reg 15(4).

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

248 Provision of support

NOTE 7--The Secretary of State may make an order restricting the application of the 1999 Act s 96(1)(b), (1) in all circumstances, to cases in which support is being provided under s 96(1)(a); or (2) in specified circumstances only, to cases in which support is being provided under s 96(1)(a): Nationality, Immigration and Asylum Act 2002 s 43(1). An order under head (2) may, in particular, make provision by reference to location or the date of an application: s 43(2). An order under s 43(1) may include transitional provision, must be made by statutory instrument, and may not be made unless a draft has been laid before and approved by resolution of each House of Parliament: s 43(3), (4).

NOTE 15--A condition imposed under the 1999 Act s 95(9) may, in particular, relate to (1) any matter relating to the use of the support provided; or (2) compliance with a restriction imposed under the 1971 Act Sch 2 para 21 (see PARA 212), or Sch 3 paras 2, 5 (see PARA 166): 1999 Act s 95(9A) (added by the Nationality, Immigration and Asylum Act 2002 s 50(1)). SI 2000/704 reg 19(1) (as amended by SI 2005/11) now refers to 'a relevant condition'. A relevant condition is one which makes the provision of asylum support subject to actual residence by the supported person or a dependant of his for whom support is being provided in a specific place or location: SI 2000/704 reg 19(2) (substituted by SI 2005/11). For the application of reg 19, see PARA 252.

TEXT AND NOTE 16--The support may now be expected to be provided weekly in the form of cash: SI 2000/704 reg 10(2) (amended by SI 2004/1313). SI 2000/704 reg 10(2), Table substituted: SI 2010/784. For the purposes of the table at SI 2000/704 reg 10(2),

a decision to grant support is made on the date recorded on the letter granting asylum support to the applicant: reg 10(3A) (added by SI 2009/1388). 1999 Act ss 96(5), 166(4)(e) repealed: Nationality, Immigration and Asylum Act 2002 s 61. SI 2000/704 reg 11 revoked: SI 2004/1313.

In addition to the cash support which the Secretary of State may be expected to provide weekly as described in SI 2000/704 reg 10(2), in the case of any pregnant woman or child under three for whom the Secretary of State has decided asylum support should be provided, there must, as a general rule, be added to the cash support for any week £3 for a pregnant woman, £5 for a child aged under one, and £3 for a child aged at least one and under three: reg 10A (added by SI 2003/241; and amended by SI 2004/1313).

NOTE 25--See *R (on the application of Blackwood) v Secretary of State for the Home Department* [2003] All ER (D) 162 (Jan) (exceptional facts; dispersal policy not applied).

NOTE 31--SI 2000/704 reg 15(2) amended: SI 2005/2114.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/249. Eligibility for social security benefits.

249. Eligibility for social security benefits.

The following categories of asylum-seekers¹ are those to whom social security benefits apply and who may therefore apply for such benefits rather than being eligible to obtain asylum support²:

- 640 (1) persons who have been given limited leave³ to enter or remain in the United Kingdom⁴ in accordance with the Immigration Rules⁵, having satisfied a requirement of the rules that they will not have recourse to public funds and who are temporarily without funds owing to the disruption of remittances from abroad, but where there is a reasonable expectation that the supply of funds will be resumed⁶;
- 641 (2) persons who have been granted leave to enter or remain in the United Kingdom upon an undertaking by another person or persons to be responsible for their maintenance and accommodation and who have not been resident in the United Kingdom for a period of at least five years beginning on the date of entry or the date on which the undertaking was given, whichever date is the later and the person or persons who gave the undertaking to provide maintenance and accommodation has, or as the case may be, have died⁷;
- 642 (3) persons who have been granted leave to enter or remain in the United Kingdom upon an undertaking by another person or persons to be responsible for their maintenance and accommodation and who have been resident in the United Kingdom for a period of five years since either the date of entry into the United Kingdom or the date of the undertaking, whichever is the later⁸;
- 643 (4) nationals of states which have ratified either the European Convention on Social and Medical Assistance (ECSMA)⁹ or the Council of Europe Social Charter (CESC)¹⁰ and who are lawfully present in the United Kingdom¹¹;
- 644 (5) persons who claimed asylum and were entitled to benefits prior to 5 February 1996 and have received no further decision on their claim for asylum (either at first instance or on appeal) since that time¹²;
- 645 (6) persons who claimed asylum on their arrival in the United Kingdom on or before 2 April 2000¹³ or within three months of the Secretary of State¹⁴ issuing a

declaration in respect of their country of origin that it is subject to such fundamental change of circumstances that the person would not ordinarily be required to return to that country¹⁵.

Persons who obtain access to social security benefits under head (6) above remain entitled until such time as the claim for asylum is recorded as being determined by the Secretary of State¹⁶ or the claim to asylum is abandoned¹⁷.

1 For the meaning of 'asylum-seeker' see para 246 note 2 ante.

2 See the Asylum Support Regulations 2000, SI 2000/704, reg 4; the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, SI 2000/636, reg 2; and para 247 ante. As to asylum support see paras 247-248 ante.

3 Ie as defined in the Immigration Act 1971 s 33(1): see para 148 note 2 ante.

4 As to the meaning of 'United Kingdom' see para 5 note 1 ante.

5 Ie the Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).

6 Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, SI 2000/636, reg 2(1), Schedule Pt I para 1.

7 Ibid Schedule Pt I para 2.

8 Ibid Schedule Pt I para 3.

9 Ie the European Convention on Social and Medical Assistance (European Treaty Series (ETS) No 14, Paris, 11 December 1953).

10 Ie the Council of Europe Social Charter (European Treaty Series (ETS) No 35, Turin, 18 October 1961).

11 Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, SI 2000/636, Schedule Pt I para 4. This does not include the EEA member states (whose nationals, whether asylum-seekers or otherwise, are not excluded from non-contributory social security benefits in any event: see the Immigration and Asylum Act 1999 s 115(9)). Those in the United Kingdom with leave qualify as being lawfully present: see Lenia Samuel *Fundamental Social Rights: Case law of the European Social Charter* (1997) p 325 citing the conclusions of the Committee of Experts at Conclusions XIII-2, p 142, Norway; Conclusions XIII-3, p 367, Finland. Those with only temporary admission in the United Kingdom while their asylum claims are being considered are not 'lawfully present': *Kaya v Haringey London Borough Council* [2001] EWCA Civ 677, applying *Re Musisi* [1987] AC 514, HL, at 522-526 per Lord Bridge of Harwich (asylum-seekers who claimed asylum on arrival and were granted temporary admission to the United Kingdom pending determination of their claims were not 'lawfully in' the territory for the purposes of the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) ('the Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmdnd 3906) art 32 where given only temporary admission).

12 Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, SI 2000/636, regs 2(4)(a), 12(11)(b); Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations 1996, SI 1996/30, reg 12(1). In order to be entitled under these provisions, the asylum-seeker must have been entitled to benefit immediately before 5 February 1996: *R v Secretary of State for Social Security, ex p Vijekis*, (10 July 1997, unreported), QBD per Dyson J; affd (5 March 1998, unreported), CA. Those who have satisfied these primary requirements to entitlement can obtain re-entitlement following a break in entitlement caused by extraneous financial circumstances such as obtaining employment: *Yildiz v Secretary of State for Social Security* [2001] EWCA Civ 309, CA. Members of an asylum-seeker's family who were in receipt of social security benefit on 4 February 1996 and who claim asylum in their own right after 4 February 1996 similarly maintain current entitlement to benefit until a decision is made on their asylum claim: Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations 1996, SI 1996/30, reg 12(1) (amended by SI 2000/636).

13 Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, SI 2000/636, regs 2(5), (6), 12(3), (7).

14 As to the Secretary of State see para 2 ante. See also para 246 note 1 ante.

15 Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, SI 2000/636, regs 2(5), 12(3), (4)(b), (6), (7)(b).

16 A claim is recorded as determined by way of a reliable document with a note that the claim has been determined, regardless of whether the claimant has been notified of the decision and is therefore able to appeal against the administrative immigration decision (notice of refusal of leave, removal directions etc) and regardless of whether the Secretary of State is considering fresh representations: *R v Secretary of State for the Home Department, ex p Salem* [1999] QB 805 at 828, [1999] 2 WLR 1 at 22, CA, per Brooke LJ, and at 832-833 and 26-27 per Sir John Balcombe, overruling *R v Secretary of State for the Home Department, ex p Bawa* (27 October 1997), QBD. See also *R v Secretary of State for the Home Department, ex p Karaoui* (1997) Times, 27 March, QBD.

17 Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, SI 2000/636, reg 12(5), (8).

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

249 Eligibility for social security benefits

NOTES 2, 6, 12-17--SI 2000/636 reg 2 amended: SI 2003/2274, SI 2008/1554, SI 2008/3108.

NOTES 7, 8--As to when a declaration constitutes a maintenance undertaking see *Ahmed v Secretary of State for Work and Pensions* [2005] All ER (D) 249 (Apr), CA.

NOTE 11--See *Szoma v Secretary of State for Work and Pensions* [2005] UKHL 64, [2006] 1 AC 564 (asylum-seeker temporarily admitted to the United Kingdom was entitled to benefits). See also *R (on the application of YA) v Secretary of State for Health* [2009] EWCA Civ 225, [2010] 1 All ER 87 (asylum seeker granted temporary admission to the United Kingdom not entitled to benefits of free national health service).

NOTE 13--SI 2000/636 reg 12(3) amended: SI 2008/1554.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/250. Temporary support.

250. Temporary support.

The Secretary of State¹ may provide, or arrange for the provision of, temporary support for asylum-seekers², or dependants³ of asylum-seekers, who it appears to him may be destitute⁴. Such support may be provided only until the Secretary of State is able to determine whether substantive support⁵ may be provided⁶.

- 1 As to the Secretary of State see para 2 ante. See also para 246 note 1 ante.
- 2 For the meaning of 'asylum-seeker' see para 246 note 2 ante.
- 3 For the meaning of 'dependant' see para 246 note 3 ante.
- 4 Immigration and Asylum Act 1999 s 98(1). As to when a person is destitute see para 246 ante.
- 5 le support under ibid s 95: see para 246 ante.
- 6 Ibid s 98(2). The provisions of s 95(2)-(11) apply for the purposes of s 98 as they apply for the purposes of s 95 (see paras 246-247 ante): s 98(3).

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

250 Temporary support

TEXT AND NOTES--When the Secretary of State is providing or arranging for the provision of accommodation for an asylum seeker and his family members under the 1999 Act s 98, where those family members confirm to the Secretary of State that they agree to being accommodated together, he must have regard to family unity and ensure, in so far as it is reasonably practicable to do so, that family members are accommodated together: Asylum Seekers (Reception Conditions) Regulations 2005, SI 2005/7, reg 3(1), (2). Regulation 3 does not apply in respect of a child when the Secretary of State is providing or arranging for the provision of accommodation for that child under the 1999 Act s 122 (see PARA 257-300): SI 2005/7 reg 3(3). When the Secretary of State is providing support or considering whether to provide support under the 1999 Act s 98 to an asylum seeker or his family member who is a vulnerable person, he must take into account the special needs of that asylum seeker or his family member: see SI 2005/7 reg 4. If the Secretary of State thinks that the asylum seeker or his family member is eligible for support under the 1999 Act s 98, he must offer the provision of support to the asylum seeker or his family member: SI 2005/7 reg 5(2). So as to protect an unaccompanied minor's best interests, the Secretary of State must endeavour to trace the members of the minor's family as soon as possible after the minor makes his claim for asylum: reg 6.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/250A. Integration loans.

250A. Integration loans.

The Secretary of State may make regulations enabling him to make loans to refugees, and to such other classes of person, or to persons other than refugees in such circumstances, as the regulations may prescribe¹. A person is a refugee for these purposes if the Secretary of State has recorded him as a refugee within the meaning of the Refugee Convention² and granted him leave to enter or remain in the United Kingdom within the meaning of the Immigration Act 1971³.

Such regulations:

- 646 (1) must specify matters which the Secretary of State must, in addition to other matters appearing to him to be relevant, take into account in determining whether or not to make a loan (and those matters may, in particular, relate to a person's income or assets, a person's likely ability to repay a loan, or the length of time since a person was recorded as a refugee or since some other event);
- 647 (2) must enable the Secretary of State to specify (and vary from time to time) a minimum and a maximum amount of a loan;
- 648 (3) must prevent a person from receiving a loan if he is under the age of 18, he is insolvent, within a meaning given by the regulations, or he has received a loan under the regulations;
- 649 (4) must make provision about repayment of a loan (and may, in particular, make provision (a) about interest; (b) for repayment by deduction from a social security benefit or similar payment due to the person to whom the loan is made);
- 650 (5) must enable the Secretary of State to attach conditions to a loan (which may include conditions about the use of the loan);
- 651 (6) must make provision about the making of an application for a loan, and the information, which may include information about the intended use of a loan, to be provided in or with an application;
- 652 (7) may make provision about steps to be taken by the Secretary of State in establishing an applicant's likely ability to repay a loan;
- 653 (8) may make provision for a loan to be made jointly to more than one person; and
- 654 (9) may confer a discretion on the Secretary of State⁴.

Regulations under this provision must be made by statutory instrument, and may not be made unless a draft has been laid before and approved by resolution of each House of Parliament⁵.

1 Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13(1) (amended by the Immigration, Asylum and Nationality Act 2006 s 45(2)).

2 The Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906).

3 Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13(2) (amended by the Immigration, Asylum and Nationality Act 2006 s 45(3)), referring to the Immigration Act 1971 s 33(1).

4 Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13(3) (amended by the Immigration, Asylum and Nationality Act 2006 s 45(4)).

5 Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13(4). In exercise of his powers the Secretary of State has made the Integration Loans for Refugees and Others Regulations 2007, SI 2007/1598.

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/251. Asylum support provided by local authorities and other bodies.

251. Asylum support provided by local authorities and other bodies.

Local authorities¹ may provide asylum support for asylum-seekers² and their dependants³ in accordance with arrangements made by the Secretary of State⁴. Such support may be provided by the local authority in one or more of the ways in which support may be provided by the Secretary of State⁵, whether the arrangements are made with the authority or with another person⁶.

A local authority may incur reasonable expenditure in connection with the preparation of proposals for entering into such arrangements⁷.

The powers conferred on a local authority include power to:

- 655 (1) provide services outside its area⁸;
- 656 (2) provide services jointly with one or more bodies which are not local authorities⁹;
- 657 (3) form a company for the purpose of providing services¹⁰;
- 658 (4) tender for contracts, whether alone or with any other person¹¹.

If the Secretary of State asks a local authority or a registered social landlord¹² to assist him to exercise his power to provide accommodation¹³, the person to whom the request is made must co-operate in giving the Secretary of State such assistance in the exercise of that power as is reasonable in the circumstances¹⁴. A local authority must supply to the Secretary of State such information about its housing accommodation¹⁵, whether or not occupied, as he may from time to time request¹⁶.

The Secretary of State may by order designate as reception zones areas in England and Wales consisting of the areas of one or more local authorities¹⁷. If he considers that a local authority whose area is within a reception zone has suitable housing accommodation within that zone¹⁸, he may direct the local authority to make available such of the accommodation as may be specified in the direction for a period¹⁹ so specified: (a) to the Secretary of State for the purpose of providing support²⁰; or (b) to a person with whom the Secretary of State has made arrangements²¹. The power to give a direction in respect of a particular reception zone must be exercised by reference to criteria specified in the order designating that zone²². A direction is enforceable by injunction on an application made on behalf of the Secretary of State²³.

Housing accommodation is suitable for these purposes if it is unoccupied, would be likely to remain unoccupied for the foreseeable future if not made available, and is appropriate for the

accommodation of persons supported under the Immigration and Asylum Act 1999²⁴ or capable of being made so with minor work²⁵. If housing accommodation for which a direction is in force is not appropriate for the accommodation of persons so supported, but is capable of being made so with minor work, the direction may require the body to whom it is given to secure that that work is done without delay²⁶. The Secretary of State must make regulations with respect to the general management of any housing accommodation for which a direction is in force²⁷. He must also, by regulations, make provision for resolving disputes arising in connection with the operation of any regulations relating to such management²⁸.

1 'Local authority' means a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly: Immigration and Asylum Act 1999 s 94(1). As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

2 For the meaning of 'asylum-seeker' see para 246 note 2 ante.

3 For the meaning of 'dependant' see para 246 note 3 ante.

4 Immigration and Asylum Act 1999 s 99(1). The arrangements are made by the Secretary of State under s 95: see para 246 ante. These arrangements with local authorities are distinct from the provision of interim asylum support by local authorities (see para 247 ante) and distinct from the powers of local authorities to make available the provision of community care services under the National Assistance Act 1948 s 21 (as amended): see para 257 post. As to the Secretary of State see para 2 ante. See also para 246 note 1 ante.

The Northern Ireland Housing Executive may provide support by way of accommodation for asylum-seekers and their dependants (if any) in accordance with arrangements made by the Secretary of State under the Immigration and Asylum Act 1999 s 95, whether the arrangements in question are made with the Executive or with another person: s 99(3).

5 Ie in one or more of the ways mentioned in *ibid* s 96(1), (2): see para 248 ante.

6 *Ibid* s 99(2).

7 *Ibid* s 99(4).

8 *Ibid* s 99(5)(a).

9 *Ibid* s 99(5)(b). This enables local authorities or groups of local authorities to form 'consortia' in their area with other bodies such as voluntary organisations, registered social landlords and housing associations in order to provide support.

10 *Ibid* s 99(5)(c).

11 *Ibid* s 99(5)(d).

12 'Registered social landlord' has the same meaning as in the Housing Act 1996 Pt I (ss 1-64) (as amended) (see HOUSING vol 22 (2006 Reissue) para 66): Immigration and Asylum Act 1999 s 100(6).

13 Ie his power under *ibid* s 95: see para 246 ante.

14 *Ibid* s 100(1), (2). This does not require a registered social landlord to act beyond its powers: s 100(3). Section 100 also applies to a registered housing association in Scotland or Northern Ireland and the Northern Ireland Housing Executive: see s 100(1), (7).

15 'Housing accommodation' includes flats, lodging houses and hostels: *ibid* s 94(1).

16 *Ibid* s 100(4). The information must be provided in such form and manner as the Secretary of State may direct: s 100(5). The Secretary of State may require any person conveying postal packets to supply redirection information to him for use in checking the accuracy of information relating to support: see s 127.

17 *Ibid* s 101(1). This provision also applies to areas of local authorities in Scotland and to Northern Ireland: see s 101(1). Before designating a zone and before determining the criteria to be included in the order designating the zone, the Secretary of State must consult such local authorities, local authority associations and other persons as he thinks appropriate: s 101(15). At the date at which this volume states the law no such

orders had been made. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante.

18 Ibid s 101(2).

19 The specified period begins on a date specified in the direction and must not exceed five years: ibid s 101(4).

20 Ibid s 101(3)(a). The support is provided under s 95: see para 246 ante. See also note 21 infra.

21 Ibid s 101(3)(b). The arrangements are made under s 95: see para 246 ante. The Secretary of State must pay to a body to which a direction is given such sums as he considers represent the reasonable costs to that body of complying with the direction: s 110(4). He must pay to a directed body sums determined to be payable in relation to accommodation made available under s 101(3)(a), and may pay to a directed body sums determined to be payable in relation to accommodation made available under s 101(3)(b): s 110(5), (6). 'Determined' means determined in accordance with regulations made by virtue of s 101(11)(a) (see note 27 infra): s 110(7).

22 Ibid s 101(6).

23 Ibid s 101(5).

24 It supported under ibid Pt VI (ss 94-127) (as amended).

25 Ibid s 101(8).

26 Ibid s 101(9).

27 Ibid s 101(10). Regulations under s 101(10) must include provision: (1) as to the method to be used in determining the amount of rent or other charges to be payable in relation to the accommodation; (2) as to the times at which payments of rent or other charges are to be made; (3) as to the responsibility for maintenance of, and repairs to, the accommodation; (4) enabling the accommodation to be inspected, in such circumstances as may be prescribed, by the body to which the direction was given; (5) with respect to the condition in which the accommodation is to be returned when the direction ceases to have effect: s 101(11). Regulations under s 101(10) may, in particular, include provision: (a) for the cost, or part of the cost, of minor work required by a direction under this provision to be met by the Secretary of State in prescribed circumstances; (b) as to the maximum amount of expenditure which a body may be required to incur as a result of a direction: s 101(12). Before making regulations under s 101(10), the Secretary of State must consult such local authorities, local authority associations and other persons as he thinks appropriate: s 101(18). At the date at which this volume states the law no such regulations had been made. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

28 Ibid s 101(13). Such regulations must include provision: (1) requiring a dispute to be resolved in accordance with the dispute resolution procedure; (2) requiring the parties to a dispute to comply with obligations imposed on them by the procedure; and (3) for the decision of the person resolving a dispute in accordance with the procedure to be final and binding on the parties: s 101(14). Before making regulations under s 101(13), the Secretary of State must consult such local authorities, local authority associations and other persons as he thinks appropriate: s 101(15). At the date at which this volume states the law no such regulations had been made.

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

251 Asylum support provided by local authorities and other bodies

TEXT AND NOTE 1--1999 Act s 99(1) amended: Nationality, Immigration and Asylum Act 2002 s 56(1).

TEXT AND NOTES 2-4--Reference to asylum-seekers and their dependants is now to persons: 1999 Act s 99(1) (amended by the Immigration, Asylum and Nationality Act 2006 s 43(1)(a)).

TEXT AND NOTES 4-6--1999 Act s 99(2), (3) substituted: 2002 Act s 56(3). Support may be provided by an authority in accordance with arrangements made with the authority or with another person: 1999 Act s 99(2) (as so substituted). Support may be provided by an authority in accordance with arrangements made under s 95 only in one or more of the ways mentioned in s 96(1), (2) (see PARA 248): s 99(3) (as so substituted).

NOTE 4--The arrangements made by the Secretary of State now include those made under the 1999 Act ss 4, 98 (see PARA 250): s 99(1) (amended by the 2002 Act s 56(1), and the 2006 Act s 43(1)(b)).

TEXT AND NOTE 7--1999 Act s 99(4) amended: 2002 Act s 56(4); 2006 Act s 43(2).

TEXT AND NOTES 8, 9--For 'a local authority' read 'an authority'; and in head (2) for 'bodies ... authorities' read 'other bodies': 1999 Act s 56(5) (amended by the 2002 Act s 56(5)).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/252. Suspension or discontinuation of support.

252. Suspension or discontinuation of support.

Asylum support¹ for a supported person² and any dependants³ or for one or more dependants of a supported person, may be suspended or discontinued if:

- 659 (1) the Secretary of State⁴ has reasonable grounds⁵ to suspect that the supported person or any dependant of his has failed without reasonable excuse to comply with any condition⁶ subject to which the asylum support is provided⁷;
- 660 (2) the Secretary of State has reasonable grounds to suspect that the supported person or any dependant of his has committed an offence⁸;
- 661 (3) the Secretary of State has reasonable grounds to suspect that the supported person has intentionally made himself and his dependants, if any, destitute⁹;
- 662 (4) the supported person or any dependant of his for whom asylum support is being provided ceases to reside at the authorised address¹⁰; or
- 663 (5) the supported person or any dependant of his for whom asylum support is being provided is absent from the authorised address for more than seven consecutive days and nights, or for a total of more than 14 days and nights in any six-month period, without the permission of the Secretary of State¹¹.

Where an application for asylum support is made, and the applicant or any other person to whom the application relates has previously had his asylum support suspended or discontinued and there has been no material change of circumstances¹² since the suspension or

discontinuation, the application need not be entertained unless the Secretary of State considers that there are exceptional circumstances which justify its being entertained¹³.

A person who is receiving asylum support¹⁴ has a right, which is a 'civil right'¹⁵, to the continuation of that support unless it is suspended or discontinued¹⁶, in which case the person must be afforded a right of appeal which complies with the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)¹⁷. Withdrawal of support in circumstances in which no other means of support is available may be a violation of the Convention¹⁸.

1 As to asylum support see paras 246-248 ante.

2 For the meaning of 'supported person' see para 247 note 13 ante.

3 For the meaning of 'dependant' see para 246 note 3 ante.

4 As to the Secretary of State see para 2 ante. See also para 246 note 1 ante.

5 In deciding what constitutes 'reasonable grounds' for these purposes, it is necessary to consider the seriousness for the person affected of the withdrawal of support and therefore the reasonable grounds must be more substantial than in a case where the consequences for the individual are less drastic: *R (on the application of Hamid Ali Husain) v Asylum Support Adjudicator* (5 October 2001, unreported), QBD, per Stanley Burnton J; and see by analogy *R v Royal Borough of Kensington and Chelsea, ex p Kujtim* [1999] 4 All ER 161, (1999) 32 HLR 579, [1999] LGR 761 (a persistent and unequivocal refusal to observe reasonable requirements of a local authority would be needed before its duty under the National Assistance Act 1948 s 21 (as amended) was discharged). As to the question of whether a person has a reasonable excuse for breaching conditions of residence by leaving accommodation where it is alleged the person was at risk of racial or other harassment or domestic violence see NASS Policy Bulletin 18: *Dealing with Allegations of Racial Harassment, General Harassment and Domestic Violence* (the Secretary of State will normally provide further support where there is good prima facie evidence either that a person has been the victim of serious assault or has good reason to believe they would be a victim if they remained in the area).

6 As to the attachment of conditions see para 247 ante.

7 Asylum Support Regulations 2000, SI 2000/704, reg 20(1)(a).

8 Ibid reg 20(1)(b). The offence mentioned in the text is one under the Immigration and Asylum Act 1999 Pt VI (ss 94-127) (as amended): see para 254 post.

9 Asylum Support Regulations 2000, SI 2000/704, reg 20(1)(c). A person has intentionally made himself destitute if he appears to be destitute, or to be likely to become so within the prescribed period (see para 246 note 4 ante), as a result of an act or omission deliberately done or made by him or any dependant of his without reasonable excuse while in the United Kingdom: reg 20(2). As to when a person is destitute see para 246 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante. It is arguable that conduct which took place before the scheme for support came into effect cannot be relied upon in seeking to establish intentional destitution: *R (on the application of Fetiti) v Islington London Borough Council* (19 October 2000, unreported), CA, per Laws LJ (decided under the similar provisions relating to intentional destitution in the asylum support interim scheme operated by local authorities (see the Asylum Support (Interim Provisions) Regulations 1999, SI 1999/3056, reg 7(1)(a), (2)). A finding of intentionality is apt to affect the whole package of asylum support provided, not simply the accommodation provided: *R (on the application of Wisniewski) v Wakefield Metropolitan District Council* (27 October 2000, unreported).

10 Asylum Support Regulations 2000, SI 2000/704, reg 20(1)(d). The authorised address is the accommodation provided for the supported person and his dependants, if any, by way of asylum support, or, if no accommodation is so provided, the address notified by the supported person to the Secretary of State in his application for asylum support or, where a change of his address has been notified to the Secretary of State, the address for the time being so notified: reg 20(3).

11 Ibid reg 20(1)(e).

12 A material change of circumstances is one which, if the applicant were a supported person, would have to be notified to the Secretary of State under ibid reg 15 (see para 248 ante): reg 21(2).

13 Ibid reg 21(1). Regulation 21 is without prejudice to the power of the Secretary of State to refuse the application even if he has entertained it: reg 21(3).

14 le as an asylum-seeker, or the dependant of an asylum-seeker who is destitute: see para 246 ante.

15 le within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 134. See *Feldbrugge v Netherlands* (1986) 8 EHRR 425 (a right to a health insurance benefit under a contributory social security scheme); *Salesi v Italy* (1993) 26 EHRR 187 (a statutory entitlement to a disability allowance); *Gustavson v Sweden* (1997) 25 EHRR 623 (criminal injuries compensation). In each of these cases the right was held to be a 'civil right' attracting the protection of art 6 of the Convention.

16 le under the Asylum Support Regulations 2000, SI 2000/704, reg 20: see the text and notes 1-11 supra.

17 *R (on the application of Hamid Ali Husain) v Asylum Support Adjudicator* (5 October 2001, unreported), QBD, per Stanley Burnton J (the right of appeal must comply with the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 6).

18 *R (on the application of Hamid Ali Husain) v Asylum Support Adjudicator* (5 October 2001, unreported), QBD, (withdrawal of support may be a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 3). See also the following cases which were decided prior to the commencement of the Human Rights Act 1998: *R v Secretary of State for the Home Department, ex p JCWI and B* (26 March 1996, unreported), QBD (withdrawal of benefits with the effect of rendering asylum-seekers destitute observed to engage such basic human rights that it was unnecessary to resort to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) to take note of them; citing also the 'law of humanity' referred to in *R v Inhabitants of Eastbourne* (1803) 4 East 103, 102 ER 769); *R v Hammersmith and Fulham London Borough Council, ex p M*, *R v Lambeth London Borough Council, ex p P*, *R v Westminster City Council, ex p A*, *R v Lambeth London Borough Council, ex p X* (1997) Times, 19 February, CA (construction of the National Assistance Act 1948 s 21 (as amended) such as to exclude destitute asylum-seekers from protection considered (obiter) to be almost certainly in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)) (affd [1997] 1 CCLR 85, CA). See further *D v United Kingdom* (1997) 24 EHRR 423 (deportation of an AIDS sufferer from United Kingdom to St Kitts prohibited in circumstances where the abrupt withdrawal of treatment received in the United Kingdom would have the result of shortening life expectancy and in circumstances where lack of shelter or proper diet would render the applicant unable to contend with infections with the result that he be subject to mental and physical suffering fell within the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 3); distinguished in *K v Secretary of State for the Home Department* [2001] Imm AR 11, CA, on the grounds that there were some relevant medical facilities. As to the power to provide support for those admitted to the United Kingdom or released from detention under the Immigration Act 1971 s 4, Sch 2 para 21 (as amended) (see para 143 ante) or released on bail from detention under the Immigration Acts see the Immigration and Asylum Act 1999 s 4. For the meaning of 'the Immigration Acts' see para 83 ante. As to the Secretary of State's operation of the 'Hard Cases' fund see para 246 note 2 ante

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

252 Suspension or discontinuation of support

TEXT AND NOTES 1-11--SI 2000/704 reg 20 substituted, reg 20A added: SI 2005/11.

Asylum support for a supported person and any dependant of his or for one or more dependants of a supported person, may be suspended or discontinued if (1) support is being provided for the supported person or a dependant of his in collective

accommodation and the Secretary of State has reasonable grounds to believe that the supported person or his dependant has committed a serious breach of the rules of that accommodation; (2) the Secretary of State has reasonable grounds to believe that the supported person or a dependant of his for whom support is being provided has committed an act of seriously violent behaviour whether or not that act occurs in accommodation provided by way of asylum support or at the authorised address or elsewhere; (3) the supported person or a dependant of his has committed an offence under the Immigration and Asylum Act 1999 Pt VI (ss 94-127) (as amended, see PARA 254); (4) the Secretary of State has reasonable grounds to believe that the supported person or any dependant of his for whom support is being provided has abandoned the authorised address without first informing the Secretary of State or, if requested, without permission; (5) the supported person has not complied within a reasonable period, which must be no less than five working days beginning with the day on which the request was received by him, with requests for information made by the Secretary of State and which relate to the supported person's or his dependant's eligibility for or receipt of asylum support including specified requests made under SI 2000/704 reg 15; (6) the supported person fails, without reasonable excuse, to attend an interview requested by the Secretary of State relating to the supported person's or his dependant's eligibility for or receipt of asylum support; (7) the supported person or, if he is an asylum seeker, his dependant, has not complied within a reasonable period, which must be no less than ten working days beginning with the day on which the request was received by him, with a request for information made by the Secretary of State relating to his claim for asylum; (8) the Secretary of State has reasonable grounds to believe that the supported person or a dependant of his for whom support is being provided has concealed financial resources and that the supported person or a dependant of his or both have therefore unduly benefited from the receipt of asylum support; (9) the supported person or a dependant of his for whom support is being provided has not complied with a reporting requirement; (10) the Secretary of State has reasonable grounds to believe that the supported person or a dependant of his for whom support is being provided has made a claim for asylum ('the first claim') and before the first claim has been determined makes or seeks to make a further claim for asylum not being part of the first claim in the same or a different name; or (11) the supported person or a dependant of his for whom support is being provided has failed without reasonable excuse to comply with a relevant condition: SI 2000/704 reg 20(1). 'Collective accommodation' means accommodation which a supported person or any dependant of his for whom support is being provided shares with any other supported person and includes accommodation in which only facilities are shared: reg 20(6)(b). The authorised address is (a) the accommodation provided for the supported person and his dependants (if any) by way of asylum support; or (b) if no accommodation is so provided, the address notified by the supported person to the Secretary of State in his application for asylum support or, where a change of address has been notified to the Secretary of State under reg 15 or under the Immigration Rules (HC Paper (1993-94) no 395) or both, the address for the time being so notified: SI 2000/704 reg 20(6)(a). 'Reporting requirement' is a condition or restriction which requires a person to report to the police, an immigration officer or the Secretary of State and is imposed under the Immigration Act 1971 Sch 2 paras 21, 22, or Sch 3 paras 2, 5: SI 2000/704 reg 20(6)(d). 'Relevant condition' has the same meaning as in reg 19(2) (see PARA 248): reg 20(6)(c).

If a supported person is asked to attend an interview of the type referred to in head (6) above, he must be given no less than five working days notice of it: reg 20(2). Any decision to discontinue support in the circumstances referred to in heads (1)-(11) above, must be taken individually, objectively and impartially and reasons must be given; decisions will be based on the particular situation of the person concerned and particular regard must be had to whether he is a vulnerable person as described by EC

Council Directive 2003/9 art 17: SI 2000/704 reg 20(3). No person's asylum support must be discontinued before a decision is made: reg 20(4). Where asylum support for a supported person or his dependant is suspended or discontinued under heads (4) or (9) above, and the supported person or his dependant are traced or voluntarily report to the police, the Secretary of State or an immigration officer, a duly motivated decision based on the reasons for the disappearance must be taken as to the reinstatement of some or all of the supported person's or his dependant's or both of their asylum support: reg 20(5).

Regulations 19, 20 apply to a person or his dependant who is provided with temporary support under the Immigration and Asylum Act 1999 s 98 in the same way as they apply to a person and his dependant who is in receipt of asylum support, and any reference to asylum support in SI 2000/704 regs 19, 20 include a reference to temporary support under the 1999 Act s 98: SI 2000/704 reg 20A.

TEXT AND NOTES 12, 13--SI 2000/704 reg 21(1) (as amended by SI 2005/11) is now expressed to be subject to SI 2000/704 reg 20(5).

NOTE 18--1999 Act s 4 now s 4(1): Nationality, Immigration and Asylum Act 2002 s 49(2). As to the power of the Secretary of State to provide accommodation for a person (or a dependant of that person) if he was, but is no longer, an asylum-seeker, and his claim for asylum was rejected: see the 1999 Act s 4(2)-(4) (s 4(2)-(4) added by the 2002 Act s 49(1)). As to regulations made under the 1999 Act s 4, see the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005, SI 2005/930; the Immigration and Asylum (Provision of Services or Facilities) Regulations 2007, SI 2007/3627; and *R (on the application of the Secretary of State for the Home Department) v Asylum Support Adjudicator* [2006] All ER (D) 237 (May). The policy of the Secretary of State to refrain from informing a failed asylum-seeker that he might be eligible for support pursuant to the 1999 Act s 4 was unlawful: *R (on the application of Salih) v Secretary of State for the Home Department* [2003] EWHC 2273 (Admin), [2003] All ER (D) 129 (Oct). See also *R (on the application of Rasul) v Asylum Support Adjudicator* [2006] All ER (D) 364 (Feb) (Secretary of State considered that viable route of return was now available to failed asylum-seeker).

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/253. Appeals to the Asylum Support Adjudicator.

253. Appeals to the Asylum Support Adjudicator.

If, on an application for support¹, the Secretary of State² decides that the applicant does not qualify for support, the applicant may appeal to an Asylum Support Adjudicator³. If the Secretary of State decides to stop providing support for a person before that support would otherwise have come to an end, that person may appeal to an adjudicator⁴.

On an appeal, the adjudicator may require the Secretary of State to reconsider the matter, substitute his decision for the decision appealed against, or dismiss the appeal⁵. The adjudicator, whose decision is final⁶, must give his reasons in writing⁷. If an appeal is dismissed, no further application by the appellant for support is to be entertained unless the Secretary of State is satisfied that there has been a material change of circumstances⁸. The Secretary of State may by regulations provide for decisions as to where support is to be provided to be appealable to an adjudicator⁹.

The Secretary of State may pay any reasonable travelling expenses incurred by an appellant in connection with attendance at any place for the purposes of an appeal¹⁰.

The Secretary of State may make rules regulating the bringing of appeals and the practice and procedure of the adjudicators¹¹. In making the rules, he must have regard to the desirability of securing, so far as is reasonably practicable, that appeals are brought and disposed of with the minimum of delay¹².

1 le support under the Immigration and Asylum Act 1999 s 95: see para 246 ante.

2 As to the Secretary of State see para 2 ante. See also para 246 note 1 ante.

3 Immigration and Asylum Act 1999 s 103(1). Persons appointed as adjudicators under the Immigration and Asylum Act 1999 are known as Asylum Support Adjudicators: s 102(1), (2). As to the terms and conditions of appointment, remuneration, expenses and pensions, compensation, staff and expenditure and proceedings of adjudicators see s 102(3), Sch 10. Notwithstanding, inter alia, their appointment by the Secretary of State, who is the respondent in all appeals to the Asylum Support Adjudicator, the Asylum Support Adjudicators fulfil the requirements of independence under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6: *R (on the application of Hamid Ali Husain) v Asylum Support Adjudicator* (5 October 2001, unreported), QBD, per Stanley Burnton J.

4 Immigration and Asylum Act 1999 s 103(2).

5 Ibid s 103(3). A decision of an Asylum Support Adjudicator which replaces an erroneous decision of the Secretary of State has effect as from the date of the decision appealed against: *R (on the application of the Secretary of State for the Home Department (NASS)) v Asylum Support Adjudicators and Berkadle and Perera* [2001] EWHC 881 (Admin).

6 Immigration and Asylum Act 1999 s 103(5).

7 Ibid s 103(4).

8 Ibid s 103(6).

9 Ibid s 103(7). Such regulations may provide for any provision of s 103 to have effect, in relation to an appeal brought by virtue of the regulations, subject to such modifications as may be prescribed: s 103(8). At the date at which this volume states the law no such regulations had been made. Therefore the jurisdiction of the Asylum Support Adjudicators is confined to the powers contained in s 103(1), (2): see the text and notes 3-4 supra. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

10 Ibid s 103(9).

11 Ibid s 104(1). The rules may, in particular, make provision: (1) for the period within which an appeal must be brought; (2) as to the burden of proof on an appeal; (3) as to the giving and admissibility of evidence; (4) for summoning witnesses; (5) for an appeal to be heard in the absence of the appellant; (6) for determining an appeal without a hearing; (7) requiring reports of decisions of adjudicators to be published; (8) conferring such ancillary powers on adjudicators as the Secretary of State considers necessary for the proper discharge of their functions: s 104(2). In exercise of this power the Secretary of State has made the Asylum Support Appeals (Procedure) Rules 2000, SI 2000/541 (which make provision in relation to the procedure before determination of the appeal (see rr 1-8, Schedule), the procedure for the determination of the appeal (see rr 9-13), the giving of directions (see r 14), representation of parties (see r 15), the giving of notices (see rr 16, 17), time limits (see r 18) and the effect of procedural irregularities (see r 19)). As to the making of rules under the Immigration and Asylum Act 1999 see para 219 note 11 ante.

12 Immigration and Asylum Act 1999 s 104(3).

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s

16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

253 Appeals to the [First-tier Tribunal]

TEXT AND NOTES--Appeals against a decision that the applicant does not qualify for support are now made to the First-tier Tribunal, appeal from which lies to the Upper Tribunal (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A): Immigration and Asylum Act 1999 ss 102, 104, Sch 10 repealed, s 103 amended: SI 2008/2833.

If the Secretary of State decides not to provide accommodation for a person under the 1999 Act s 4 or not to continue to provide accommodation for a person under s 4, the person may appeal to the First-tier Tribunal: s 103(2A) (added by Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 10(3)(a); and amended by SI 2008/2833).

TEXT AND NOTES 1-3--Now, where a person has applied for support under all or any of the Nationality, Immigration and Asylum Act 2002 ss 4, 95 and 17, the provisions of 1999 Act s 103 apply: s 103(1) (replaced by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 10(4)(a)).

NOTE 4--Section 103(2) only gives an asylum support adjudicator (now the First-tier Tribunal) jurisdiction to hear an appeal where asylum support has been provided under s 95: *R (on the application of the Secretary of State for the Home Department) v Chief Asylum Support Adjudicator* [2004] HLR 423, CA. The fact that an applicant is a failed asylum-seeker does not preclude an application under s 103: *R (on the application of the Secretary of State for the Home Department) v Chief Asylum Support Adjudicator* [2006] All ER (D) 414 (Nov).

NOTES 9--1999 Act s 103(7) amended: 2004 Act s 10(3)(b), (4)(c).

TEXT AND NOTE 11--SI 2000/541 revoked: SI 2008/2683.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/254. Offences.

254. Offences.

A person is guilty of an offence if, with a view to obtaining support¹ for himself or any other person², he: (1) makes a statement or representation which he knows is false in a material particular³; (2) produces or gives a person exercising functions in respect of the support provisions⁴, or knowingly causes or allows to be produced or given to such a person, any document or information which he knows is false in a material particular⁵; (3) fails, without reasonable excuse, to notify a change of circumstances when required to do so in accordance with the support provisions⁶; or (4) without reasonable excuse, knowingly causes another person to fail to notify a change of circumstances which that other person was required to notify⁷. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both⁸.

A person is guilty of an offence if, with a view to obtaining any benefit or other payment or advantage⁹ for himself or any other person, he dishonestly¹⁰: (a) makes a statement or representation which is false in a material particular¹¹; (b) produces or gives to a person exercising functions under the support provisions, or causes or allows to be produced or given to such a person, any document or information which is false in a material particular¹²; (c) fails to notify a change of circumstances when required to do so in accordance with the support provisions¹³; or (d) causes another person to fail to notify a change of circumstances which that other person was required to notify¹⁴. A person guilty of such an offence is liable on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both¹⁵, or, on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both¹⁶.

A person is guilty of an offence if, without reasonable excuse, he¹⁷: (i) intentionally delays or obstructs a person exercising functions conferred by or under the support provisions¹⁸; or (ii) refuses or neglects to answer a question, give any information or produce a document when required to do so in accordance with the support provisions¹⁹. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale²⁰.

A person is guilty of an offence if, during any period in respect of which he has given a written undertaking in pursuance of the Immigration Rules²¹ to be responsible for the maintenance and accommodation of another person²²: (A) he persistently refuses or neglects, without reasonable excuse, to maintain that person in accordance with the undertaking²³; and (B) in consequence of his refusal or neglect, support²⁴ is provided for or in respect of that person²⁵. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 4 on the standard scale or to both²⁶. A person is not to be taken to have refused or neglected to maintain another person by reason only of anything done or omitted in furtherance of a trade dispute²⁷.

If any of the above offences committed by a body corporate is proved to have been committed with the consent or connivance or an officer²⁸, or to be attributable to neglect on his part, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly²⁹.

The Secretary of State may require any person conveying postal packets to supply redirection information to him for use in the prevention, detection, investigation or prosecution of the above criminal offences³⁰.

1 Ie support under any provision made by or under the Immigration and Asylum Act 1999 Pt VI (ss 94-127) (as amended).

2 Ibid s 105(1).

3 Ibid s 105(1)(a).

4 Ie functions in respect of ibid Pt VI (as amended).

5 Ibid s 105(1)(b).

6 Ibid s 105(1)(c).

7 Ibid s 105(1)(d).

8 Ibid s 105(2). As to the standard scale see para 81 note 2 ante.

9 Ie a payment or advantage under ibid Pt VI (as amended).

10 Ibid s 106(1).

11 Ibid s 106(1)(a).

- 12 Ibid s 106(1)(b).
- 13 Ibid s 106(1)(c).
- 14 Ibid s 106(1)(d).
- 15 Ibid s 106(2)(a). As to the statutory maximum see para 159 note 21 ante.
- 16 Ibid s 106(2)(b).
- 17 Ibid s 107(1).
- 18 Ibid s 107(1)(a).
- 19 Ibid s 107(1)(b).
- 20 Ibid s 107(2).
- 21 Ie the Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395).
- 22 Immigration and Asylum Act 1999 s 108(1).
- 23 Ibid s 108(1)(a).
- 24 Ie support under any provision made by or under ibid Pt VI (as amended).
- 25 Ibid s 108(1)(b).
- 26 Ibid s 108(2).
- 27 Ibid s 108(3).
- 28 'Officer', in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity: ibid s 109(2).
- 29 Ibid s 109(1). If the affairs of a body corporate are managed by its members, s 109(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 109(3).
- 30 See ibid s 127.

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

254 Offences

TEXT AND NOTES 1-16--An immigration officer may arrest without warrant a person whom the immigration officer reasonably suspects has committed an offence under the 1999 Act s 105 or 106: s 109A (added by UK Borders Act 2007 s 18). An offence under the 1999 Act s 105 or 106 will be treated as (1) a relevant offence for the purposes of the

Immigration Act 1971 ss 28B and 28D, and (2) an offence under the 1971 Act Pt 3 (criminal proceedings) for the purposes of ss 28(4), 28E, 28G and 28H (search after arrest, &c.): 1999 Act s 109B(1) (added by 2007 Act s 18). The following provisions of the Immigration Act 1971 will have effect in connection with an offence under the 1999 Act s 105 or 106 as they have effect in connection with an offence under the 1971 Act (a) s 28I (seized material: access and copying), (b) s 28J (search warrants: safeguards), (c) s 28K (execution of warrants), and (d) s 28L(1) (interpretation): 1999 Act s 109B(2) (as so added).

NOTES 1-16--As to the disclosure of information by employers and financial institutions where the Secretary of State reasonably suspects an employee of having committed an offence under the 1999 Act s 105(1)(a), (b), or (c), or s 106(1)(a), (b) or (c), see the Nationality, Immigration and Asylum Act 2002 ss 134-139.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/255. Provisions in respect of property.

255. Provisions in respect of property.

The provisions described below¹ apply in relation to premises in which accommodation has been provided² for a supported person³. If, on an application made by a person authorised in writing by the Secretary of State⁴, a justice of the peace is satisfied that there is reason to believe that specified circumstances exist, he may grant a warrant⁵ to enter premises to the person making the application⁶. The specified circumstances are that: (1) the supported person or any dependants⁷ of his for whom the accommodation is provided is not resident in it⁸; (2) the accommodation is being used for any purpose other than the accommodation of the asylum-seeker⁹ or any dependant of his¹⁰; or (3) any person other than the supported person and his dependants, if any, is residing in the accommodation¹¹.

The Secretary of State may require any person appearing to him to have any interest in, or to be involved in any way in the management or control of, premises in which accommodation is or has been provided for supported persons, or any building which includes such premises, to provide him with such information with respect to the premises and the persons occupying those premises as he may specify¹².

If as a result of asylum support, a person has a tenancy or licence to occupy accommodation, and if one or more of the specified conditions¹³ is satisfied, and if he is given notice to quit¹⁴, his tenancy or licence is treated as ending within the period specified in that notice, regardless of when it could otherwise be brought to an end¹⁵.

1 Ie the Immigration and Asylum Act 1999 s 125.

2 Ie provided under *ibid* s 95 (see para 246 ante) or s 98 (see para 250 ante).

3 *Ibid* s 125(1). For the meaning of 'supported person' see para 247 note 13 ante.

4 As to the Secretary of State see para 2 ante. See also para 246 note 1 ante.

5 A warrant may be executed at any reasonable time, using reasonable force: Immigration and Asylum Act 1999 s 125(3).

6 *Ibid* s 125(2).

7 For the meaning of 'dependant' see para 246 note 3 ante.

8 Immigration and Asylum Act 1999 s 125(2)(a).

9 For the meaning of 'asylum-seeker' see para 246 note 2 ante.

10 Immigration and Asylum Act 1999 s 125(2)(b).

11 Ibid s 125(2)(c).

12 Ibid s 126(1), (2). A person who is required to provide information must do so in accordance with such requirements as may be prescribed by regulations: s 126(3). At the date at which this volume states the law no such regulations had been made. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante. The Secretary of State may require any person conveying postal packets to supply redirection information to him for any use in checking the accuracy of information relating to support: see s 127. Information provided to the Secretary of State may be used by him only in the exercise of his functions under Pt VI (ss 94-127) (as amended): s 126(4).

13 The conditions are that: (1) the asylum support is suspended or discontinued as a result of any provision of the Asylum Support Regulations 2000, SI 2000/704, reg 20 (see para 252 ante); (2) the relevant claim for asylum has been determined; (3) the supported person has ceased to be destitute; or (4) he is to be moved to other accommodation: reg 22(2). As to when a person is destitute see para 246 ante.

14 A notice to quit is in accordance with ibid reg 22(1) if: (1) it is in writing, in a case where note 13 head (1), (3) or (4) supra applies, and specifies as the notice period a period of not less than seven days, or, in a case where the Secretary of State has notified his decision on the relevant claim for asylum to the claimant, specifies as the notice period a period at least as long as whichever is the greater between seven days, or the period beginning with the date of service of the notice to quit and ending with the date of determination of the relevant claim for asylum; or (2) if it is in writing, it specifies as the notice period a period of less than seven days, and the circumstances of the case are such that that notice period is justified: reg 22(3), (4).

15 Ibid reg 22(1).

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/256. Expenditure.

256. Expenditure.

The Secretary of State¹ may: (1) pay to any local authority² such sums as he considers appropriate in respect of expenditure incurred, or to be incurred, by the authority in connection with persons who are, or have been, asylum-seekers³ and their dependants⁴; (2) pay to any local authority or local authority association such sums as he considers appropriate in respect of services provided by the authority or association in connection with the discharge of functions under the support provisions⁵; and (3) make payments to any local authority towards the discharge of any liability of supported persons⁶ or their dependants in respect of council tax

payable to that authority⁷. Such payments may be made on such terms, and subject to such conditions, as the Secretary of State may determine⁸.

The Secretary of State may make grants of such amounts as he thinks appropriate to voluntary organisations⁹ in connection with the provision by them of support, of whatever nature, to persons who are or have been asylum-seekers and to their dependants, and in connection with connected matters¹⁰. Grants may be made on such terms, and subject to such conditions, as the Secretary of State may determine¹¹.

Provision is made in respect of overpayments by the Secretary of State¹², and in respect of the recovery of expenditure in cases of misrepresentation¹³ and in cases in which a sponsor has undertaken to be responsible for the maintenance and accommodation of the recipient of support¹⁴.

1 As to the Secretary of State see para 2 ante. See also para 246 note 1 ante.

2 For the meaning of 'local authority' see para 251 note 1 ante. The Secretary of State may also make payments to any Northern Ireland authority: see the Immigration and Asylum Act 1999 s 110(1), (2), (9).

3 For the meaning of 'asylum-seeker' see para 246 note 2 ante.

4 Immigration and Asylum Act 1999 s 110(1). For the meaning of 'dependant' see para 246 note 3 ante.

5 Ibid s 110(2). The support provisions are contained in Pt VI (ss 95-127) (as amended): see para 246 et seq ante.

6 For the meaning of 'supported person' see para 247 note 13 ante.

7 Immigration and Asylum Act 1999 s 110(3).

8 Ibid s 110(8).

9 'Voluntary organisations' means bodies, other than public or local authorities, whose activities are not carried on for profit: ibid s 167(1).

10 Ibid s 111(1).

11 Ibid s 111(2).

12 See ibid s 114; and the Asylum Support Regulations 2000, SI 2000/704, reg 18. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

13 See the Immigration and Asylum Act 1999 s 112.

14 See ibid s 113.

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

256 Expenditure

NOTE 3--For the purposes of the 1999 Act ss 110, 111, the definition of 'asylum seeker' in s 94(1) has effect as if persons under 18 years of age were not excluded: Nationality, Immigration and Asylum Act 2002 s 48.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/257. Exclusions from other welfare entitlements.

257. Exclusions from other welfare entitlements.

A person subject to immigration control¹, unless he falls within such category or description, or satisfies such conditions, as may be prescribed, is not entitled to the following non-contributory social security benefits². No such person is entitled to income-based jobseeker's allowance under the Jobseekers Act 1995 or to the following benefits under the Social Security Contributions and Benefits Act 1992: (1) attendance allowance; (2) severe disablement allowance; (3) invalid care allowance; (4) disability living allowance; (5) income support; (6) working families' tax credit; (7) disabled person's tax credit; (8) a social fund payment; (9) child benefit; (10) housing benefit; or (11) council tax benefit³.

Persons who are subject to immigration control⁴ are also excluded from obtaining the following community care services⁵ if their needs arise solely⁶ on the grounds of either their destitution⁷ or the physical or anticipated physical effects of their being destitute: (a) residential accommodation⁸ on the grounds of their needing care and attention by reason of age, illness, disability or any other circumstances; (b) services⁹ for the promotion of the welfare of old people; (c) services¹⁰ for the prevention of illness, the care of persons suffering from illness and the after care of those persons who have been so suffering¹¹.

A person who requires leave to enter or remain in the United Kingdom¹² is not eligible for housing assistance unless he is of a class specified in an order made by the Secretary of State¹³. An asylum-seeker or his dependant who is in a class specified in an order made by the Secretary of State¹⁴ is ineligible for housing assistance if he has any accommodation in the United Kingdom, however temporary, which is available for his occupation¹⁵.

Further, each housing authority¹⁶ must secure that, so far as practicable, a tenancy¹⁷ of, or licence to occupy, housing accommodation¹⁸ provided under the Housing Act 1985¹⁹ is not granted to a person subject to immigration control²⁰ unless he is of a class specified in an order made by the Secretary of State²¹, or the tenancy of, or licence to occupy, such accommodation is granted in accordance with arrangements made under the Immigration and Asylum Act 1999²².

If an application for support²³ has been made by an eligible person²⁴ whose household includes a dependant²⁵ under the age of 18 (referred to as 'the child') then²⁶: (i) if it appears to the Secretary of State that adequate accommodation is not being provided for the child, he must exercise his powers²⁷ by offering, and if his offer is accepted by providing or arranging for the provision of, adequate accommodation for the child as part of the eligible person's household²⁸; and (ii) if it appears to him that essential living needs of the child are not being met, he must exercise his powers by offering, and if his offer is accepted by providing or arranging for the provision of, essential living needs for the child as part of the eligible person's household²⁹.

No local authority³⁰ may provide assistance³¹ under the Children Act 1989³² in respect of a dependant under the age of 18, or any member of his family, at any time when the Secretary of State is complying with the provisions regarding support for children³³ in relation to him³⁴, or

there are reasonable grounds for believing that: (A) the person concerned is a person for whom asylum support may be provided³⁵; and (B) the Secretary of State would be required to comply with the provisions regarding support for children if that person had made an application for asylum support³⁶. Provision is made in relation to the backdating of benefits where a person is recorded by the Secretary of State as a refugee³⁷ and before he was so recorded, he or his dependant was a person who was excluded from social security benefits³⁸.

1 'A person subject to immigration control' means a person who is not a national of an EEA state and who: (1) requires leave to enter or remain in the United Kingdom but does not have it; (2) has leave to enter or remain in the United Kingdom which is subject to a condition that he does not have recourse to public funds; (3) has leave to enter or remain in the United Kingdom given as a result of a maintenance undertaking; or (4) has leave to enter or remain in the United Kingdom only as a result of the Immigration and Asylum Act 1999 s 58(3), Sch 4 para 17 (continuation of leave pending an appeal: see para 175 ante); s 115(9). For the meaning of 'EEA state' see para 227 note 2 ante. As to a maintenance undertaking see para 249 text to note 7 ante. As to the meaning of 'United Kingdom' see para 5 note 1 ante.

2 Ibid s 115(3). In relation to the benefits mentioned in head (6) or head (7) in the text, 'prescribed' means prescribed by regulations made by the Treasury: s 115(5). The Social Security Contributions and Benefits Act 1992 s 175(3)-(5) (as amended) (supplemental powers in relation to regulations) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 30) applies to regulations made by the Secretary of State or the Treasury under the Immigration and Asylum Act 1999 s 115(3) as it applies to regulations made under the Social Security Contributions and Benefits Act 1992: Immigration and Asylum Act 1999 Act s 115(7). As to the Secretary of State see para 2 ante. See also para 246 note 1 ante. Regulations may provide for a person to be treated for prescribed purposes only as not being a person to whom s 115 applies: s 115(4). Prescribed categories of person are expressly not excluded from specified benefits under s 115(1) by the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, SI 2000/636, regs 2, 12, Schedule Pts I, II. For prescribed categories of asylum-seeker who are not excluded from the main social security benefits by the Immigration and Asylum Act 1999 s 115(1) see para 249 ante. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

3 Ibid s 115(1). Note that, as from a day to be appointed, the list of benefits in s 115 is amended by the State Pension Credit Act 2002 s 4(2); the Tax Credits Act 2002 ss 51, 60, Sch 4 paras 20-21, Sch 6; and the Regulatory Reform (Carer's Allowance) Order 2002, SI 2002/1457, art 2, Schedule paras 1, 3(c)). At the date at which this volume states the law no such date had been appointed. See SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 91 et seq. Such persons in Northern Ireland are also not entitled to certain benefits: see the Immigration and Asylum Act 1999 s 115(2), (6), (8).

4 Ie those who are subject to immigration control pursuant to ibid s 115(9): see note 1 supra.

5 Ie within the meaning of the National Health Service and Community Care Act 1990 s 46(3): see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) para 1012.

6 See the National Assistance Act 1948 s 21(1A) (as added); the Health Services and Public Health Act 1968 s 45(4A) (as added); the National Health Service Act 1977 s 21, Sch 8 para 2A (as added); and note 11 infra. In order to avoid being in need 'solely' as a result of destitution or the physical or anticipated physical effects of destitution, it is sufficient for the needs of the applicant to be made to any material extent more acute by some circumstances other than mere lack of accommodation and funds: *R v Wandsworth London Borough Council, ex p O, R v Leicester City Council, ex p Bhikha* [2000] 4 All ER 590 at 599-660, [2000] 1 WLR 2539 at 2548-2549, CA, per Simon Brown LJ, and at 608 and 2557 per Hale LJ (non-asylum-seekers who were subject to immigration control within the Immigration and Asylum Act 1999 s 115 could obtain assistance from a local authority under the National Assistance Act 1948 s 21 (as amended) provided their needs were made more acute by circumstances such as age, illness or disability); distinguishing *R v Secretary of State for the Environment, ex p Tower Hamlets London Borough Council* [1993] QB 632, [1993] 3 All ER 439, CA, and *R v Hillingdon Borough Council, ex p Streeting* [1980] 3 All ER 413, [1980] 1 WLR 1425, CA. Although there is a tension between the construction of the term 'solely' in *R v Wandsworth London Borough Council, ex p O, R v Leicester City Council, ex p Bhikha* supra and its application in the context of asylum-seekers who have an alternative means of support in the form of asylum support under the Immigration and Asylum Act 1999 Pt VI (ss 94-127) (as amended), the community care provisions, as amended by the Immigration and Asylum Act 1999, are to bear the same meaning whether applied to asylum-seekers or non asylum-seekers: see *R (on the application of Mani) v Lambeth London Borough Council, R (on the application of Tasci) v Enfield London Borough Council, R (on the application of J) v Enfield London Borough Council* [2002] EWHC 735 (Admin); *R (on the application of Mercy Wanjiku Murua and Peter Gitau Gichura) v Croydon London Borough Council* (25 October 2001), QBD, per Mrs Justice Rafferty (asylum-seekers whose needs attributable to disabilities were subsumed almost entirely in the need for accommodation and other essential living needs arising from destitution, were still owed a duty by the local authority under the National Assistance Act 1948 s 21 (as amended) because their needs were made

materially more acute by factors other than lack of accommodation and funds). See also *R (on the application of Ojji) v Secretary of State for the Home Department* [2002] EWHC 1839 (Admin).

7 'Destitution' for the purposes of the community care provisions (referred to in note 6 supra) bears the same meaning as destitution for the purposes of the Immigration and Asylum Act 1999 Pt VI (as amended): National Assistance Act 1948 s 21(1B) (added by the Immigration and Asylum Act 1999 s 116); Health Services and Public Health Act 1968 s 45(4B) (added by the Immigration and Asylum Act 1999 s 116); National Health Service Act 1977 Sch 8 para 2B (added by the Immigration and Asylum Act 1999 s 117(2)). When deciding whether a person is destitute for the purposes of these provisions, the local authority is required to ignore any asylum support that might otherwise be available to the asylum-seeker under the Immigration and Asylum Act 1999 Pt VI (as amended): Asylum Support Regulations 2000, SI 2000/704, regs 6(1), (3), 23(1), (3). See also *R (on the application of Westminster City Council v NASS* [2001] EWCA Civ 512, CA (the local authority rather than the Secretary of State was responsible for meeting the needs of an asylum-seeker where those needs for care and attention fell within the National Assistance Act 1948 s 21(1) (as amended), s 21(1A) (as added) (see note 6 supra); this was because, while the Secretary of State was bound to have regard to support available from the local authority in determining whether the asylum-seeker was 'destitute', the local authority was obliged to ignore any asylum support which may be available from the Secretary of State. In principle, destitution is of itself capable of exposing a person to circumstances in which he becomes eligible for assistance under the National Assistance Act 1948 s 21 (as amended): *R v Hammersmith and Fulham London Borough Council, ex p M*, *R v Lambeth London Borough Council, ex p P*, *R v Westminster City Council, ex p A*, *R v Lambeth London Borough Council, ex p X* (1997) Times, 19 February, CA (asylum-seekers may be owed a duty under the National Assistance Act 1948 s 21 (as amended) in circumstances where, as a result of their predicament after they arrive in the United Kingdom, they reach a state where their lack of food, accommodation, inability to speak the language, ignorance of the country and the stress of pursuing their asylum claims, leaves them in need of care and attention for one of the specified reasons; the local authority is also able to anticipate this deterioration in the condition of the asylum-seeker such that it is appropriate to provide assistance). A destitute asylum-seeker will now only be entitled to assistance under the amended provisions, if he satisfies the additional test: see note 6 supra.

8 The local authority is not restricted to providing residential accommodation within an institutional setting (*R v Newham London Borough Council, ex p Medical Foundation for the Care of Victims of Torture* (1997) Times, 26 December) and nor is the local authority restricted to providing bed and breakfast accommodation (*R v Newham London Borough Council, ex p C* (1998) 31 HLR 567). See also SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) para 1029.

9 Services include meals and recreation in the home, information on elderly services, travel assistance to participate in services under the Health Services and Public Health Act 1968 s 45 (as amended), assistance in finding boarding accommodation, social work support and advice, home help and home adaptations, subsidy of warden costs, warden services: see Department of Health and Social Security Circular No 19/71 para 4; and SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) para 1024.

10 Services include training and day centres, meals to be provided at the said centres, social work and advice, night sitter services, recuperative holidays, facilities for recreational activities.

11 National Assistance Act 1948 s 21 (amended by the Local Government Act 1972 ss 195, 272, Sch 23 para 2, Sch 30; the National Health Service Reorganisation Act 1973 s 58, Sch 5; the Housing (Homeless Persons) Act 1977 s 20(4), Schedule; the Children Act 1989 s 108(5), Sch 13 para 11; the National Health Service and Community Care Act 1990 ss 42(1), 66, Sch 9 para 5, Sch 10; the Community Care (Residential Accommodation) Act 1998 s 1; the Immigration and Asylum Act 1999 s 116; the Health and Social Care Act 2001 s 53); Health Services and Public Health Act 1968 s 45 (amended by the Local Authority Social Services Act 1970 s 14(2), Sch 3; the National Health Service Act 1977 s 129, Sch 15 para 43; the Statute Law (Repeals) Act 1978; the Health and Social Security Adjudications Act 1983 s 30, Sch 10; the National Health Service and Community Care Act 1990 ss 42(7), 66(2), Sch 10; and the Immigration and Asylum Act 1999 s 117(1)); National Health Service Act 1977 Sch 8 para 2 (amended by the Mental Health Act 1983 s 148, Sch 4 para 47; the Health and Social Security Adjudications Act 1983 s 30, Sch 10; the Children Act 1989 s 108, Schs 12, 15; the National Health Service and Community Care Act 1990 s 66, Schs 9, 10; and the Immigration and Asylum Act 1999 s 117(2)). Illegality of immigration status is not in itself a bar to an applicant who otherwise qualifies for assistance from a local authority under the National Assistance Act 1948 s 21 (as amended): *R v Wandsworth London Borough Council, ex p O*, *R v Leicester City Council, ex p Bhikha* [2000] 4 All ER 590, [2000] 1 WLR 2539, CA (overruling *R v Brent London Borough Council, ex p D* (1997) 31 HLR 10 and *R v Lambeth London Borough Council, ex p Sarhangi* [1999] LGR 641 (the National Assistance Act 1948 s 21 (as amended) provided welfare provision of last resort, in addition to which local authorities had no business or expertise in determining immigration status which, in any event, was a complex matter best left to the Secretary of State who should ideally speedily resolve outstanding claims).

12 Ie leave to enter or remain under the Immigration Act 1971 (see para 86 ante) whether or not such leave has been given; such persons are defined as subject to immigration control within the meaning of the Asylum and Immigration Act 1996: s 13(2).

13 See the Housing Act 1996 s 185(2); and HOUSING vol 22 (2006 Reissue) para 284. The following persons are specified by order as eligible for housing assistance: (1) refugees within the meaning of the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954); Cmd 9171) (the 'Refugee Convention') and Protocol (New York, 31 January 1967; TS 15 (1969); Cmd 3906) art 1 (Class A); (2) persons granted exceptional leave to enter or remain whose leave is not subject to a condition requiring them to maintain and accommodate themselves (and any persons dependent on them) without recourse to public funds (Class B); (3) persons with current leave to enter or remain in the United Kingdom which is not subject to any limitation or condition and who are habitually resident in the United Kingdom provided they are not persons who satisfy all of the following three conditions: (a) they have been given leave to enter or remain in the United Kingdom upon an undertaking given by another person (their 'sponsor') to be responsible for their maintenance and accommodation, (b) they have been resident in the United Kingdom for less than five years beginning on the date of entry or the date on which the undertaking was given in respect of them, whichever date is later, (c) their sponsor is still alive (Class C); (4) persons who left Montserrat after 1 November 1995 because of the effect on that territory of a volcanic eruption (Class D); (5) persons who are habitually resident in the Common Travel Area and who are either (a) nationals of a state which has ratified the European Convention on Social and Medical Assistance (Paris, 11 December 1953; ETS 14) or the European Social Charter (Turin, 26 February 1965; ETS 35) and are lawfully present in the United Kingdom (see para 249 text and notes 10-11 ante) or (b) persons who are nationals of a state which is a signatory to the European Convention on Social and Medical Assistance or a state which is a signatory to the European Social Charter and who were owed a duty by a housing authority under the Housing Act 1985 Pt III (ss 58-78) (repealed with savings) or the Housing Act 1996 Pt VI (ss 159-174) (as amended) (see HOUSING vol 22 (2006 Reissue) para 240 et seq) prior to 3 April 2000 and which is still extant (Class E); (6) asylum-seekers who either (a) made a claim for asylum prior to 3 April 2000 on their arrival which has not been decided by the Secretary of State (Class F), or (b) made a claim to asylum prior to 3 April 2000 after their arrival but within three months of the day on which the Secretary of State made a declaration that there had been a fundamental change of circumstances in the country of which they are a national (see para 249 note 15 ante) and which claim has not been decided by the Secretary of State (Class G), or (c) made a claim to asylum on or before 4 February 1996, were on that date entitled to housing benefit and whose asylum claim has not since that date been decided by the Secretary of State or, if the claim was decided by the Secretary of State prior to that date and an appeal was pending or could have been brought on that date, the appeal has not since that date been determined (Class H); (7) persons who are receiving either income-based job-seekers' allowance or income support and are eligible for that benefit because they were provided with a limited leave in accordance with the Immigration Rules (ie the Statement of Changes in Immigration Rules (HC Paper (1993-94) no 395)) and they are temporarily without funds because remittances to them have been disrupted (see para 249 ante) (Class I): Homelessness (England) Regulations 2000, SI 2000/701, regs 2(1), 3, Classes A-I; Homelessness (Wales) Regulations 2000, SI 2000/1079, reg 2.

14 See note 13 supra.

15 Housing Act 1996 s 186 (repealed by the Immigration Act 1999 s 117(5) as from a day to be appointed but of continuing relevance to applications made before the coming into force of that provision).

16 'Housing authority' means, in relation to England and Wales, a local housing authority within the meaning of the Housing Act 1985 (see HOUSING vol 22 (2006 Reissue) para 9) and, in relation to Northern Ireland, the Northern Ireland Housing Executive: Immigration and Asylum Act 1999 s 118(2). In relation to Northern Ireland see also ss 119, 121.

17 'Tenancy' has the same meaning as in the Housing Act 1985 (see HOUSING vol 22 (2006 Reissue) para 236): Immigration and Asylum Act 1999 s 118(5).

18 For the meaning of 'housing accommodation' see para 251 note 15 ante. Ibid s 118 does not apply in relation to any allocation of housing to which the Housing Act 1996 Pt VI (ss 159-174) (as amended) applies (see HOUSING vol 22 (2006 Reissue) para 240 et seq): Immigration and Asylum Act 1999 s 118(7).

19 Ie under the Housing Act 1985 Pt II (ss 8-57) (as amended) (see HOUSING vol 22 (2006 Reissue) para 224 et seq): see the Immigration and Asylum Act 1999 s 118(3)(a).

20 For these purposes, 'person subject to immigration control' means a person who under the Immigration Act 1971 requires leave to enter or remain in the United Kingdom (see para 86 ante), whether or not such leave has been given: Immigration and Asylum Act 1999 s 118(6).

21 Ibid s 118(1)(a). See the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000, SI 2000/706; and the Persons subject to Immigration Control (Housing Authority Accommodation) (Wales) Order 2000, SI 2000/1036. As to the making of orders under the Immigration and Asylum Act 1999 see para 141 note 8 ante.

22 Immigration and Asylum Act 1999 s 118(1)(b). The arrangements are made under s 95: see para 246 ante.

23 Ie an application under *ibid* s 95: see para 246 ante.

24 'Eligible person' means a person who appears to the Secretary of State to be a person for whom support may be provided under *ibid* s 95: s 122(1).

25 For the meaning of 'dependant' see para 246 note 3 ante.

26 Immigration and Asylum Act 1999 s 122(2).

27 Ie his powers under *ibid* s 95: see para 246 ante.

28 *Ibid* s 122(3). If accommodation provided in the discharge of the duty imposed by s 122(3) has been withdrawn, only the local authority within whose area the withdrawn accommodation was provided may provide assistance under the Children Act 1989 s 17 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) para 851 et seq) in respect of the child concerned: Immigration and Asylum Act 1999 s 122(7)-(10). 'Assistance' means the provision of accommodation or of any essential living needs: s 122(6).

29 *Ibid* s 122(4).

30 For the meaning of 'local authority' see para 251 note 1 ante.

31 For the meaning of 'assistance' see note 28 supra.

32 Ie under the Children Act 1989 s 17 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) para 851 et seq.

33 Ie complying with the Immigration and Asylum Act 1999 s 122.

34 *Ibid* s 122(5)(a), (7). In such circumstances as may be prescribed by regulations, s 122(5) does not apply: s 122(11). At the date at which this volume states the law no such circumstances had been prescribed. As to the making of regulations under the Immigration and Asylum Act 1999 see para 78 note 16 ante.

35 Ie support under *ibid* s 95: see para 246 ante.

36 *Ibid* s 122(5)(b), (7).

37 Ie a refugee within the meaning of the Refugee Convention: see note 13 supra.

38 See the Immigration and Asylum Act 1999 s 123. As to persons excluded from social security benefits see the text and notes 1-3 supra.

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.

257 Exclusions from other welfare entitlements

NOTE 2--1999 Act s 115(5) amended: Health and Social Care Act 2008 s 138(3). SI 2000/636 reg 2 amended: SI 2003/2274, SI 2008/1554, SI 2008/3108. SI 2000/636 reg 12 amended: SI 2008/1554.

TEXT AND NOTE 3--Head (3). Invalid care allowance now known as carer's allowance: see Regulatory Reform (Carer's Allowance) Order 2002, SI 2002/1457, art 2, Schedule. 1999 Act s 115(1) further amended: Welfare Reform Act 2007 Sch 3 para 19; Health and Social Care Act 2008 s 138(2).

NOTE 3--Amendment made by State Pension Credit Act 2002 s 4(2) now in force: SI 2003/ 1766. Amendments made by Tax Credits Act 2002 Sch 4 paras 21, 22, Sch 6 now in force: SI 2003/392, SI 2003/962. See *R (on the application of Gjini) v Islington LBC* [2003] EWCA Civ 558, [2003] All ER (D) 254 (Apr) (reduction in subsistence payments since applicant also in receipt of child benefit).

NOTES 6, 7, 11--National Health Service Act 1977 consolidated: see National Health Service Act 2006, National Health Service (Wales) Act 2006; and HEALTH SERVICES.

NOTE 6--See *R (on the application of AG) v Leeds City Council*; *R (on the application of MD) v Leeds City Council* [2007] All ER (D) 163 (Dec).

NOTES 7, 11--1999 Act s 117(2) repealed: National Health Service (Consequential Provisions) Act 2006 Sch 4.

NOTE 11--See *R (on the application of O) v Haringey LBC* [2004] EWCA Civ 535, [2004] 2 FCR 219.

NOTE 13--SI 2000/701 replaced: Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006, SI 2006/1294 (amended by SI 2006/2007, SI 2006/2527, SI 2006/3340, SI 2009/358). SI 2000/1079 replaced: Homelessness (Wales) Regulations 2006, SI 2006/2646 (amended by SI 2008/1879, SI 2009/393).

NOTE 21--SI 2000/706 amended: SI 2005/1379, SI 2006/2521, SI 2008/1768.

NOTE 22--1999 Act s 118(1)(b) amended: Immigration, Asylum and Nationality Act 2006 s 43(3).

NOTE 34--See *R (on the application of A) v National Asylum Support Service* [2003] EWCA Civ 1473, [2004] 1 WLR 752 (local authority not obliged to provide additional assistance arising from disability of asylum-seeker's dependant where Secretary of State providing support under 1999 Act s 95).

NOTE 38--Immigration and Asylum Act 1999 s 123 repealed: Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 12(1), Sch 4.

Halsbury's Laws of England/BRITISH NATIONALITY, IMMIGRATION AND ASYLUM (VOLUME 4(2) (2002 REISSUE))/4. ASYLUM/(2) SUPPORT FOR ASYLUM-SEEKERS/257A. Support for failed asylum-seekers.

257A. Support for failed asylum-seekers.

The following provisions¹ apply for the purposes of provisions relating to (1) support and accommodation for asylum-seekers², (2) accommodation centres³, and (3) withholding and withdrawal of support⁴. A person (A-S) remains (or again becomes) an asylum-seeker, despite the fact that the claim for asylum made by A-S has been determined, during any period when (a) A-S can bring an in-country appeal against an immigration decision⁵, or (b) an in-country appeal, brought by A-S⁶ against an immigration decision, is pending⁷.

The above provisions will be treated as always having had effect⁸.

¹ ie the UK Borders Act 2007 s 17.

- 2 le the Immigration and Asylum Act 1999 Pt 6 (and s 4).
- 3 le the Nationality, Immigration and Asylum Act 2002 Pt 2.
- 4 le ibid Sch 3: 2007 Act s 17(1).
- 5 Under the 2002 Act s 82 or the Special Immigration Appeals Commission Act 1997 s 2.
- 6 Under either of the provisions mentioned in NOTE 5.
- 7 le pending within the meaning of the 2002 Act s 104: 2007 Act s 17(2). For the purposes of s 17(2) (1) 'in-country' appeal means an appeal brought while the appellant is in the United Kingdom, and (2) the possibility of an appeal out of time with permission must be ignored: s 17(3). For the purposes of the provisions mentioned in head (1) and (2) in the text, a person's status as an asylum-seeker by virtue of head (b) in the text continues for a prescribed period after the appeal ceases to be pending: s 17(4). In s 17(4) 'prescribed' means prescribed by regulations made by the Secretary of State; and the regulations (a) may contain incidental or transitional provision, (b) may make different provision for different classes of case, (c) must be made by statutory instrument, and (d) will be subject to annulment in pursuance of a resolution of either House of Parliament: s 17(5).
- 8 Ibid s 17(6).

UPDATE

245-257 Support for Asylum-seekers

The Secretary of State may arrange for the provision of premises to be known as accommodation centres, and local authorities may assist with arrangements for the provision of such centres: Nationality, Immigration and Asylum Act 2002 ss 16, 38 (s 16 amended by Constitutional Reform Act 2005 Sch 18 Pt 2). See further s 19, Sch 7 para 4 (Sch 7 para 4 amended by SI 2007/275).

As to the power of the Secretary of State to make regulations enabling him to make loans to refugees and others, see the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 13; and PARA 250A.

As to support for failed asylum-seekers see PARA 257A.